# The Solicitors' Journal

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THE

# SOLICITORS' JOURNAL

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## CURRENT TOPICS

### Opportunity for Advertisement?

COUNTY court judges from time to time demonstrate their reluctance when they are constrained to give judgment for finance companies or their assignees on claims arising out of hire-purchase agreements. This reluctance is sometimes based on their view that the defendant has taken goods, usually a second-hand motor car, without sufficient inspection, sometimes on the one-sided terms of the agreement, sometimes on both. We recently suggested that finance companies should revise the clauses relating to termination before legislation overtakes them, and that Hire Purchase Information, Ltd., should extend their activities even more so as to protect the innocent buyers of cars and other goods which are already subject to hire-purchase agreements. It is astonishing how quite poor people assume obligations running into many hundreds of pounds without the benefit either of legal advice on complicated legal documents or of technical advice on complicated pieces of machinery. The problem is assuming such proportions that before long the pressure for legislation will become very strong. We think that The Law Society could contribute to a solution by a national advertising campaign in the popular and technical Press and also on television. We could combine with the motoring organisations in warning the public about the risks they run when they buy second-hand cars without having the report of competent engineers and sign closely printed agreements without either reading them or finding out from solicitors what they mean. We have no doubt that all reputable dealers would welcome this move. As a corollary we suggest that information about legal aid should be attached to county court summonses.

### The Judges' Rules

THE HOME SECRETARY announced last week that the Judges' Rules are to be revised. These rules of practice were first approved by the judges of the Queen's Bench Division in 1912 and issued for the guidance of police officers in conducting inquiries. A Home Office circular of 1930 was issued with the approval of the judges for the purpose of removing difficulties or divergences of opinion as to the meaning of the rules which cover the recording and use in evidence of statements made by accused persons when in police stations or in police custody. Both Mr. Butler and the Royal Commission on the Police have received representations on the subject and relevant material received by the Royal Commission is to be made available for the review which the LORD CHIEF JUSTICE is arranging. It will be interesting to see if the reformulated rules cover the question of the use of tape-recorders for taking statements from witnesses.

## CONTENTS

## Land Compensation

THE consolidating Land Compensation Bill has now been published. Its principal parts deal with determination of questions of disputed compensation, determining the amount of compensation, certification by planning authorities of appropriate alternative development, and compensation in certain cases of development after acquisition. The Bill of forty-two clauses and five Schedules will replace entirely the Acquisition of Land (Assessment of Compensation) Act, 1919. By removing the compensation provisions from the various Town and Country Planning Acts it should pave the way for a clarification of those Acts by a consolidating measure containing provisions properly within the province of town and country planning.

## Judicial By-product

APPENDED to the judgment in *Re Cement Makers' Federation's Agreement*, which we report on p. 284, where the Restrictive Practices Court declared that the general price-fixing restrictions agreed between the members of the Cement Makers' Federation were not contrary to the public interest although certain other restrictions were, was a statement as to the status of that court itself. During the hearing of the case certain comments had been passed by a weekly periodical on the argument then being presented for the federation. The court did not consider any further action was required in that context but dealt with a subsequent suggestion that the ordinary law of contempt of court did not apply to cases before that court. As the court was vested by statute with the powers, rights and authority of the High Court, proceedings before it were *sub judice* and the publication of any matter tending to interfere with those proceedings would be dealt with as contempt of court. Public discussion of the merits of restrictions referred to the court was not ruled out but the publication of any matter calculated to deter or influence witnesses or to substitute trial by newspapers for trial by the court amounted to contempt. The court added that no doubt the good sense of the Press would make it easy to see where the line should be drawn. We should have preferred the use of a less optimistic adjective than "easy."

## Landscape into Wirescape

IN the last fortnight letters have appeared in *The Times* under the above heading relating to the sore topic of overhead cables belonging to the Central Electricity Generating Board. The following novel point of law available to objectors to such overhead cables has been brought to our attention. By s. 22 (1) of the Electricity (Supply) Act, 1919, the Board have power to "place any electric line below ground across any land, and above ground across any land *other than* land covered by buildings or used as a garden or pleasure ground in cases where the placing of such lines above ground is otherwise lawful," provided in effect that the consent is obtained either of the landowner or of the Minister of Power after a hearing, such consent depending on non-legal considerations. Exercise of this power can be serious, especially as the grant of a way-leave under the section impliedly includes any requisite additional right such as to erect steel supporting towers (see *Central Electricity Generating Board* v. *Jennaway* [1959] 1 W.L.R. 937). No protection is provided by the words "where . . . otherwise lawful," since these refer not to private rights but "to some direct infringement of a statutory right or some obviously wrong or illegitimate use of a power such, for instance, as putting electric cables too low down across a footpath or river, road or railway" (per VAISEY, J., in *National Trust* v. *Midlands Electricity Board* [1952] Ch. 380, at p. 389). However, reliance may be placed, where appropriate, on the expression "pleasure ground," which means something in the nature of a park and connected with the amenity or convenience of a house (*R.* v. *Minister of Health; ex parte Waterlow & Sons, Ltd.* [1946] K.B. 385). Hitherto the Board have contended that the expression in its present context involves public enjoyment. However, we are informed that, on the advice of the Treasury Solicitor, the Minister recently rejected this contention and decided that certain land not used for agricultural or forestry purposes but merely for the owner's pleasure was a "pleasure ground." Therefore, the Board had no power to place an electric line above that land. Although the Board may play the ponderous trump card of compulsory purchase (under s. 9 of the Electricity Act, 1947), in the meantime this interpretation represents a major victory of landscape over wirescape.

## Law and Morality

SIR PATRICK DEVLIN last week continued his analysis of the relationship between sin and crime. He has the outstanding advantage of being a philosopher as well as a practical lawyer, but we regret that we find his latest essay, which took the form of a presidential address to the Holdsworth Club at Birmingham University, unsatisfying. One passage whose assumptions we question is that in which Sir Patrick said that he thought it a pity that the distinction between the criminal and the quasi-criminal had become blurred: this had damaged the law and would have done so far more were it not that the ordinary man still retained the distinction in his mind, but he could not be expected to do so for ever if the law jumbled morals and sanitary regulations together and taught him to have no more respect for the Ten Commandments than the woodworking regulations. We hazard the suggestion that a wilful breach of the woodworking regulations or of many sanitary regulations is as morally reprehensible as a breach of some at least of the Ten Commandments. The real trouble is that our values are confused: morality has not marched as fast as science.

## Statement Substantially True

IN the recent case at Winchester Assizes between two members of Fareham Urban District Council, an interesting point arose with regard to the defence of justification. The defendant did not dispute that when opposing the election of the plaintiff to the planning committee he said: "I can prove that he has used his position as chairman for his own personal gain." It seems that the jury took the view that the defendant's words were true in one case and LAWTON, J., directed them that this was sufficient to enable them to say that the defendant had proved the truth of his allegation. Burrough, J., once said: "It is sufficient if the substance of the . . . statement be justified; it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge . . ." (*Edwards* v. *Bell* (1824), 1 Bing. 403). In the case at Winchester, in the opinion of the jury, "the sting" of the defendant's charge was justified.

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# EPITOMES OF TITLE

READERS will remember the recommendations of the Council of The Law Society as to the manner in which an abstract of title might be provided by means of an epitome and (as to the whole or part of the title) by photographic copies of documents. The requirements were summarised, and suggested amendments were examined, in an article at 103 SOL. J. 666. The Council have given further consideration to the problem and to the suggestions made and have published an amended Opinion in the *Law Society's Gazette*, February, 1961, p. 85. The variations from the Opinion previously published are not of a fundamental nature, but they are sufficiently important to justify a brief explanation of them. We are particularly pleased to find that the Council have adopted several suggestions made by readers in letters published in our correspondence columns and by writers of articles in this journal.

### Use by mortgagor

It is now stated expressly that the new system may be used by both a vendor's solicitor and a mortgagor's solicitor.

### Abstracts of part of title

The Opinion published in 1959 stated that the abstract might be "wholly or partly in the form of an epitome . . . accompanied by photographic copies, or examined abstracts where appropriate, or photographic copies of examined abstracts." In other words, it was assumed that part of the title might be dealt with in an abstract in conventional form, in which case there would be no reference in the epitome to documents so abstracted. We suggested (103 SOL. J. 666) that "where the new form is to be used in respect of any part of the title it would be very helpful if the epitome were prepared in such a manner as to cover the whole of the title, even though a large number of the documents are abstracted in an ordinary unexamined abstract." Effect has been given to this view and the amended requirement is that if any photographic copies are to be provided the whole abstract should be explained by an epitome which may be accompanied by "photographic copies of documents, or abstracts in traditional form (examined or not as appropriate) or photographic copies of such abstracts."

### Size of epitome

The Council suggest that it should be "on foolscap or draft paper, but in any event on paper not larger than the accompanying copy documents." Presumably, the intention is that if all documents are photographically copied and are of draft size an epitome should be prepared on paper of the same size. On the other hand, if an abstract is provided on brief-size paper as to part of the title then the epitome will be on foolscap and so will fold conveniently. The Solicitors' Law Stationery Society, Ltd., are publishing forms of these sizes appropriately headed and with brief explanatory notes.

### Description of property

The Council recommend that the epitome should be headed only with a short description of the property. This carries into effect an observation first made by Mr. A. E. Parker (103 SOL. J. 615) and enables the same epitome to be used on a further transaction merely by making any necessary additional entry or entries.

### Documents to be handed over

In our first comments on the form of an epitome we suggested that it would be convenient to indicate whether each original document would be handed over on completion. The Council have now made the specific requirement that this should be stated.

### Numbering of documents

To their requirement that accompanying documents should be identified by numbering, the Council have added that these numbers should "continue in sequence when further documents are added." This view accords with the intention that the same epitome should be used on later transactions by deleting entries and (if necessary) removing the copies but retaining the numbers unchanged.

### Permanence of copies

The Council have changed their wording significantly. The previous requirement was that the party delivering the abstract should provide one which would "stand the test of time under normal use even if frequent reference" were made to it. They now state that it is the responsibility of the party who delivers the abstract to provide one which "will remain legible for the thirty years or so for which an abstract is usually required." A note is added to the effect that until greater experience is gained of the degree of permanency obtainable by the various techniques and of their operation in practice "a vendor's or a mortgagor's solicitor is not to be entitled to insist on the acceptance by a purchaser's or mortgagee's solicitor of a photographic copy of a document of which neither the original nor an examined traditional abstract, nor an examined type-written copy, is to be handed over on completion." The main consequence of this change, in practice, will be to prevent the provision of an abstract by means of photographic copies on sale of part of land in the vendor's title unless the purchaser's solicitor can be convinced of the quality provided.

### Stamp duty

The requirement that the stamp duty should be stated in the epitome has been deleted. Apparently it is thought that a photographic copy indicates the stamp adequately and, in any event, it can be checked on examination of the documents.

There seems to be every reason to think that the system recommended by the Council will work satisfactorily in practice. It is to be hoped that solicitors will not provide photographic copies unless they are accompanied by an epitome in the form recommended. There is very great benefit in the adoption of one recognised system and the only way of achieving this is to follow the recommendations of the Council.

J. GILCHRIST SMITH.

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The third annual Justice Ball (in aid of JUSTICE, the British Section of the International Commission of Jurists) will be held at the Savoy Hotel on Friday, 5th May, 1961, from 8.30 p.m. to 2 a.m. Tickets (£2 15s. each) can be obtained from Tom Sargant, Secretary of Justice, 1 Mitre Court Buildings, Temple, E.C.4. Tel. CENtral 9428.

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# CHARACTER—I

"THE fact that a man has an unblemished reputation leads to the presumption that he is incapable of committing the crime for which he is being tried . . . So too, evidence of antecedent bad conduct would form equally good ground for inferring the prisoner's guilt" (per Cockburn, C.J., in *R.* v. *Rowton* (1865), L. & C. 520). Reputation—commonly referred to among lawyers as character—imports the credit or discredit derived from public opinion by way of esteem or obloquy, since public opinion reflects the judgment of one's neighbours on one's deportment in society; and it is upon that judgment that one's reputation is based. Testimony as to good character, therefore, has been admissible in our courts for three hundred years because it constitutes some evidence of disposition. Such evidence, however, must refer to general conduct, as distinguished from particular facts or transactions, general opinion and not individual opinion. "The correct inquiry is as to the general character of the accused, and whether the witness thinks him likely to be guilty of the offence charged in the information" (per Lord Ellenborough, C.J., in *R.* v. *Davison* (1809), 31 St. Tri. 99, at p. 187; *R.* v. *Jones* (1809), 31 St. Tri. 310). This rule is, however, often relaxed and allowed to be exceeded in favour of the accused whose defence has to be conducted subject to the provisions of s. 1 (*f*) of the Criminal Evidence Act, 1898, which enacts:—

> "A person charged and *called as a witness* in pursuance of this Act *shall not be asked*, and if asked shall not be required to answer, any question tending to show that he *has committed or been convicted of or been charged* with any offence other than that wherewith he is then charged, *or is of bad character*, unless—(i) the proof that he has committed or been convicted of such other offence is *admissible evidence to show that he is guilty of the offence wherewith he is then charged*; or (ii) he has personally or by his advocate *asked questions of the witnesses for the prosecution with a view to establish his own good character*, or *has given evidence of his good character*, or *the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution*; or (iii) he has given evidence against *any other person charged with the same offence*."

Obviously, evidence of previous good character will not avail a defendant where the case against him is so strong as to leave no room for doubting or wavering; otherwise nobody would ever be convicted, since everyone who is first tried for an offence has *ipso facto* previously borne a good character (*R.* v. *Bliss-Hill* (1918), 13 Cr. App. R. 125). Yet a defendant who brings a good character with him into the witness-box is not only entitled to have his evidence carefully considered; he is also entitled to be believed—unless, of course, he tells the jury "a cock-and-bull story." Indeed, such is the fairness of our law that only evidence of good character is admissible, owing to the danger that the prisoner would be tried on the evidence of his bad character rather than on evidence of facts bearing more directly upon the offence charged against him. That is why the statute forbids cross-examining the accused as to other offences or putting to him questions which would reasonably suggest that he had committed them (*R.* v. *Haslam* (1916), 12 Cr. App. R. 10). Nevertheless, in the interest of truth and justice, in order that the false impression should be removed, evidence of bad character may be called by the prosecution to rebut evidence of good character given for the defence (*R.* v. *Rowton*, *supra*)—while the defendant himself may be cross-examined as to his character, including his previous convictions. Yet this happens very rarely, as the prosecution would warn the defence in advance of the adverse evidence at their disposal. What does happen, however, is that a defendant's bad character goes in indirectly in the following circumstances.

### Admissibility of adverse evidence

The subsection confirms the decision of the House of Lords in *Makin* v. *A.-G. for New South Wales* [1894] A.C. 57: "The mere fact that evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears on the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would be otherwise open to the accused" (per Lord Herschell, L.C., at p. 65). Since the passing of the Criminal Evidence Act Lord Sumner has laid down that "before an issue can be said to be raised which would permit the introduction of such evidence, so obviously prejudicial to the accused, it must have been raised in substance, if not in so many words, and the issue so raised must be one to which the prejudicial evidence is relevant" (*Thompson* v. *Director of Public Prosecutions* [1918] A.C. 221, at p. 232). Among other authorities bearing on this matter, e.g., *Harris* v. *Director of Public Prosecutions* [1952] A.C. 694, there are two of particular interest.

(1) Where at his trial for burglary the accused put forward the defence that his entry into the house was not a voluntary but an unintentional act, and that he had walked into it in a state of automatism, it was held that he had been wrongly cross-examined as to his previous convictions, as though the defence had been one of accident, and his conviction was quashed (*R.* v. *Harrison-Owen* (1951), 35 Cr. App. R. 108).

(2) On the other hand, at his trial for murder *L* testified that, at the same place and about the same time as the murder, he himself had been assaulted by a person unknown and robbed of £500 which had been won in a football pool, suggesting that his assailant was the murderer. On appeal against conviction, it was held that evidence adduced in rebuttal—to show that his story of how he had come by the £500 was false and that he had stolen a football pool certificate—was relevant and had been rightly admitted (*R.* v. *Lumelino* [1955] Cr. L.R. 644).

As a rule, the nature and conduct of the defence manifest themselves in the cross-examination of the witnesses for the prosecution and in the evidence given in chief by the defendant and his witnesses, if any. Accordingly, statements by any one of these at that stage which clearly reflected on the character of the prosecutor or the witnesses for the prosecution would put the defendant's character in issue. On the other hand, answers given in cross-examination constitute, prima facie, part of the case for the prosecution; and counsel for the prosecution ought not to frame his questions in such a form as to lead the defendant to answer in a way which could compromise him under the subsection (*R.* v. *Jones* (1909), 3 Cr. App. R. 67). Indeed, it had been decided seventy-five years before that such questions are in the nature of a trap and ought to be stopped by the judge (*R.* v. *Grout* (1834), 6 Car. & P. 629). Yet only two years later such cross-examination went on uninterrupted, and under its pressure the defendant—to his detriment—expressed a view which he had not and probably would not have spontaneously voiced,

the prosecution only obtaining what it specifically asked for (*R.* v. *Rappolt* (1911), 6 Cr. App. R. 156; cf. *R.* v. *Baldwin* (1925), 18 Cr. App. R. 175).

**Emphatic denial of guilt**

Words amounting only to emphatic denial of guilt do not place the defendant in peril of exposing his bad character (*R.* v. *Grout*, *supra*; *R.* v. *Rouse* [1904] 1 K.B. 184). Nor does an unconsidered observation pertinent to the defence and made without giving attention to it; but "if the defence is so conducted, or the nature of the defence is such, as to involve the proposition that the jury ought not to believe the prosecutor or one of his witnesses for the prosecution, upon the ground that his conduct—not his evidence in the case, but his conduct outside the evidence given by him—makes him an unreliable witness, then the jury ought also to know the character of the prisoner who either gives that evidence or makes that charge . . . with the view of showing that he has such a bad character that the jury ought not to rely upon his evidence" (*R.* v. *Preston* [1909] 1 K.B. 568, at p. 575). In this case the appellant was placed on an identification parade and stood second from one end of the row. The man who came forward to identify the alleged offender immediately picked out the person standing second from the other end of the row. At the trial the appellant deposed that he had overheard the inspector say something about "second" to a constable whom he sent to bring the identifying man, accusing the inspector of deliberately assisting the witness in his identification. Whereupon he was cross-examined as to character on the ground that his evidence "involved imputations" upon the prosecution, and he was convicted. It was a borderline case, and the conviction was quashed.

It is to be observed that a witness called by the defence as to character may be cross-examined as to particular facts, and the word "character"—when applied to a witness for the prosecution—is not confined to general reputation. So that if only a single disreputable piece of conduct is suggested to him, e.g., that he is committing perjury for the purpose of revenge, that would amount to an attack upon his character (*R.* v. *Dunkley* (1927), 19 Cr. App. R. 78). However, objection to the admissibility of questions tending to prove the defendant's bad character must be taken at the trial. His counsel cannot stand aside and allow an improper question to be asked and then seek to quash the conviction on the ground that the question should not have been put and that the evidence thereby obtained was inadmissible (*R.* v. *Bridgwater* [1905] 1 K.B. 131).

**"Ordinary and natural interpretation" of section**

The statutory phrase "the nature or conduct of the defence" has been the subject of a good deal of legal discussion and various decisions, culminating in *R.* v. *Hudson* (1912), 7 Cr. App. R. 256, which settled that aspect of the subsection once and for all. There it was suggested in cross-examination that one or more of the witnesses for the prosecution committed the offence charged, yet the defence claimed not to have forfeited the protection of the subsection on the ground that the imputation was necessary for the proper conduct of the defence. In fact, this very question arose about one year after the passing of the Act in the case of *R.* v. *Marshall* (1899), 63 J.P. 36, where Darling, J., allowed the prisoner—charged with murder—to be cross-examined as to her previous convictions because she alleged that her husband, who had been called as a witness for the prosecution, had killed the deceased. However, in *Hudson's* case, *supra*, the Court of Criminal Appeal said: "We think that the words of the section, 'Unless . . . the nature or conduct of the defence is such as to involve imputations,' etc., must receive their ordinary and natural interpretation, and that it is not legitimate to qualify them by adding or inserting the words 'unnecessarily' or 'unjustifiably' or 'for purposes other than that of developing the defence,' or other similar words" (p. 262).

This decision has not been affected by the proposition laid down in *Stirland* v. *Director of Public Prosecutions* (1944), 88 SOL. J. 255, that an accused does not deprive himself of the protection of the subsection merely because the proper conduct of his defence necessitates the making of injurious reflections on the prosecutor or his witnesses. But such reflections must not relate to a prosecution witness's conduct apart from his evidence, for impugning questions have often to be asked if the evidence is to be properly tested. As has been pointed out, no misconduct must be imputed in order to show that the witness is unworthy of credit and ought not to be believed upon his oath (*R.* v. *Preston*, *supra*; *R.* v. *Jenkins* (1945), 31 Cr. App. R. 1). It is clear, therefore, that the prisoner is at liberty to set up any defence that is open to him on the indictment—subject always to the proviso that, if his defence involves disclosing facts which reflect upon the character of one or more witnesses for the prosecution, then he lays himself open to cross-examination on his own character. It might be his only way of defending himself, but it is none the less an "imputation" (*R.* v. *Cunningham* [1959] 1 Q.B. 288).

Cases of rape, however, are *sui generis*, in that the defence of consent on the part of the prosecutrix does not involve an attack on her character (*R.* v. *Turner* (1944), 30 Cr. App. R. 9). Thus, despite the modern tendency towards equality between the sexes, and notwithstanding the not uncommon use of contraceptives, consent by a woman—whether married or unmarried—still implies disrepute and the law affords her special protection in that respect (Slander of Women Act, 1891). Moreover, where in a trial for murder the defence set up was that the act had been done in self-defence—the allegation being that the killed man had made improper overtures to the accused, and on these being rejected had violently assaulted him—and the accused was thereupon cross-examined as to his character on the ground that the dead man was the prosecutor and that the defence involved an imputation upon his character, it was held that the deceased was not the prosecutor: he was dead and could take no part in the proceedings (*R.* v. *Biggin* (1919), 14 Cr. App. R. 87). As a matter of fact, it had previously been decided that imputations made against persons not called as witnesses do not come within the scope of the subsection (*R.* v. *Westfall* (1912), 7 Cr. App. R. 176).

*(To be concluded)* JOSEPH YAHUDA.

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**Personal Notes**

Mr. JOHN HERBERT BELLIS, solicitor, of Penmaenmawr and Llanfairfechan, was married on 4th March to Miss Sheila McNeil-Ford, of Conwav.

Mr. GEORGE HENRY BURGESS, retiring clerk to the borough and county justices at Congleton, Cheshire, was presented with a clock and a tea trolley at a ceremony on 8th March.

# MORE CONTROL

WHEN a settlor finally yields to advice, if he ever does, and decides to settle a substantial holding of shares in a family company with a view to reducing estate duty on his death, the question arises who ought to be the first-named trustee of the settlement. Seeing that almost all articles of association confer voting power on the first-named of joint holders, will the trust holding count in calculating whether the first-named has control of the company and, if so, what are the taxation consequences of control?

The question of control generally rears its head for one of the following reasons:—

1. A company under the control of not more than five persons may be liable to a surtax direction.

2. In the case of such a company the death of a shareholder who himself had control, or was deemed to have control, at the relevant time may lead to an assets basis of valuation of shares passing on his death under s. 55 of the Finance Act, 1940, or even a charge on the company itself under s. 46.

3. For profits tax purposes there are limits on the payments that a director-controlled company may make to its directors.

4. A director-controlled company cannot effectively provide by a "top-hat" scheme for any director who controls more than 5 per cent. of the ordinary share capital (s. 390 of the Income Tax Act, 1952).

The position of the settlor as first-named trustee in connection with estate duty was decided in *Barclays Bank, Ltd.* v. *Inland Revenue Commissioners* [1960] 3 W.L.R. 280, by the House of Lords and fully dealt with in a recent article (104 SOL. J. 1088); generally speaking it may be said that in all the above cases the question of control is merely a matter of voting power, subject to the qualification that the Finance Act, 1940, expressly excludes the voting power of a trustee who was not himself the settlor.

It would be too much to expect consistency throughout the whole taxation field, and a decision of the Court of Session in *Inland Revenue Commissioners* v. *Lithgows, Ltd.* 1961 S.L.T. 160, attributed a different meaning to "control" as defined by s. 333 (1) of the Income Tax Act. A price fixed on a sale from one company to another can be treated as artificial and ignored for tax purposes if one of the companies controls the other or both are under common control, and the definition refers to the power of a person to secure that the affairs of the company in question are conducted in accordance with the wishes of that person. The Court of Session held that where the same person was first-named trustee of two settlements, one of which held a majority of the shares of Company *A* and the other of which held a majority of the shares of Company *B*, there was no common control under this definition. Importance was attached to the use of the word "secure," because although a first-named trustee might be able to pass a resolution on a particular occasion, he was subject to his duty to his co-trustees and beneficiaries and could not *secure* that the resolution stood if it were attacked as being in breach of duty. In other words, and here lies the interest of the decision, the very arguments which failed in *Barclays Bank, Ltd.* v. *Inland Revenue Commissioners, supra*, have succeeded in a slightly different context.

J. P. L.

# PRISONERS OF HISTORY—II

## PROPOSED CHANGES IN CRIMINAL JURISDICTION

ALTHOUGH we are disappointed that the Streatfeild Committee have held back from proposing fundamental changes in the structure of the criminal courts, we welcome their suggestions for altering the jurisdiction of assizes, quarter sessions and petty sessions. We have no doubt that quarter sessions ought to be able to try cases of sexual intercourse with girls between thirteen and sixteen; it is not necessary to have a judge of the High Court to fine young men, most of whom plead guilty, a few pounds. Likewise, the majority of cases of bigamy could easily be dealt with at sessions, while the peculiar reasons which led Parliament in 1828 to single out night poaching as a heinous offence have ceased to be peculiar. On the other hand, the committee consider that the part-time character of courts of quarter sessions makes them unsuitable for the trial of cases lasting a number of days, and they recommend that even those long cases which are not unusually grave or difficult should normally be tried at assizes. The committee concede that this may cause some dislocation at assizes, but say that a court presided over by a full-time judge can adapt itself more easily to a long case. We do not accept this argument. The question is not whether the judge who tries the case is full-time or part-time, but whether the court and its organisation is static or peripatetic. The committee also propose that exceptionally grave and exceptionally difficult cases of bigamy should go to assizes. In other words, the committee are moving away from the idea that the nature of the crime should determine where it is to be tried, and towards the idea that assizes should concentrate on grave and complicated cases and quarter sessions on the rest. The unfortunate people who would have to decide between assizes and quarter sessions where there is a choice are the committing magistrates, and we do not envy them. The only logical method of dealing with the problem is to commit all cases to one court, leaving the distribution between senior and junior judges to be done shortly before the trial in the light of information received not only from the prosecution but also from the defence. One difficulty is that magistrates will not be aware either of the number of other cases which have been or will be committed to assizes or of the likelihood or otherwise of a plea of guilty. In the meantime, so long as we keep the dual system, magistrates will have to do their best. We do not doubt that these proposals if implemented will lend to substantial improvements and none of them can prejudice the construction of a more rational edifice in due course. In the next article we shall consider the proposal to enlarge the summary jurisdiction of magistrates and the consequent relief which this would bring to quarter sessions.

P. ASTERLEY JONES.

# ADMINISTRATION WITH A FOREIGN ELEMENT—III

## ESTATE DUTY

WE have seen in previous articles that Mr. Lewis is the executor of a testator domiciled abroad who owned a considerable amount of property in various parts of the world. Mr. Lewis is not, unfortunately, the only person entitled to a grant. We saw in the last article that he is entitled to probate of the will so far only as it disposed of movable property. However, in reviewing estate duty legislation, as we propose to do now, we shall forget about the probate complications and assume for the moment that we are advising the personal representative at large of the testator.

By s. 1 of the Finance Act, 1894, estate duty is prima facie payable on all the estate of the deceased, no matter where it is situated. But the effect of this provision is cut down in a number of ways.

### Property not liable to estate duty

Section 28 (2) of the Finance Act, 1949, provides that property shall be deemed for the purposes of estate duty *not* to include any property passing on the death which is situated *out* of Great Britain if it is shown that the proper law regulating the devolution of the property so situate, or the disposition under or by reason of which it passes, is the law neither of England nor of Scotland and that one at least of the following conditions is satisfied, namely:

(*a*) that the deceased did not die domiciled in any part of Great Britain;

(*b*) that the property so situate passes under or by reason of a disposition—

(i) made by a person who, at the date at which the disposition took effect, was domiciled elsewhere than in some part of Great Britain; and

(ii) not made, directly or indirectly, on behalf of, or at the expense of, or out of funds provided by, a person who at that date was domiciled in some part of Great Britain;

(*c*) that the property so situate is, by the law of the country in which it is situate, immovable property;

or, if the property so situate passes only by virtue of s. 2 (1) (*c*) of the Finance Act, 1894 (which governs gifts *inter vivos*) as having been the subject of a gift *inter vivos* and it is shown that one at least of the above conditions is satisfied. In other words, if the property did not pass by virtue of a gift *inter vivos*, the following conditions must apply:—

(i) it must be situated outside Great Britain;

(ii) the proper law regulating the devolution of the property or the disposition under which it passes must be neither English nor Scottish law; and

(iii) one of the three conditions (*a*) to (*c*) above must be fulfilled.

In the case of a gift *inter vivos* only requirement (iii) is necessary.

### Situation of assets

Requirement (i) raises the question of the situation of assets. There is no difficulty about immovable property from its very nature, but intangible rights are not always so easy to locate. However, briefly, a right which depends upon some sort of registration, such as a share in a company, is situated at the place at which the register or the principal register is kept (*Brassard* v. *Smith* [1925] A.C. 371). An interest in a trust fund is situated in the country which is the forum of the administration (i.e., where the trustees reside) because it is there the trustees can be sued (*Sudeley* v. *A.-G.* [1897] A.C. 11). A debt is situated in the place in which it is recoverable by action, which is usually the place where the debtor resides (*Re Queensland Mercantile Agency Co.* [1892] 1 Ch. 219).

In requirement (ii) devolution refers to the passing of property on intestacy or other process of law. The meaning of "disposition" is more subtle. It could refer to an *instrument* disposing of property or it could mean the *provision* in an instrument dealing with property. The House of Lords, by a majority, have adopted the latter construction in *Philipson-Stow* v. *Inland Revenue Commissioners* [1960] 3 W.L.R. 1008, Lord Simonds remarking, at p. 1013, that "there can presumably be several dispositions in a single instrument." The expression "proper law" is mysterious; it may have been borrowed from the law of contract, in which context it means the law which the contracting parties intended to govern their contractual obligations, wherever performed. But in *Philipson-Stow* v. *Inland Revenue Commissioners*, *supra*, a majority of their lordships could not give any effective meaning to the word "proper," and held that it added nothing to the words "law regulating" the devolution or disposition of the property. If, therefore, the property is immovable, as it was in that case, the law regulating its devolution or disposition is the *lex situs*.

Section 20 of the Finance Act, 1894, provides that where in a British possession to which the section has been applied by Order in Council (as it has to most British possessions), duty is payable by reason of a death in respect of any property situated in such possession and passing on such death, a sum equal to the amount of that duty must be deducted from the estate duty paid in this country. (This section will clearly be of use to Mr. Lewis in connection with the Australian assets.) In practice the duty payable in the British possession is not, of course, known when the executor in this country swears his Inland Revenue affidavit. He can put in an estimated amount, but it is probably more usual in practice to claim the allowance at a later stage by corrective affidavit when a certificate from the relevant revenue authority overseas setting out the duty and the assets concerned has been obtained.

### Double duty relief

Section 7 (4) of the Finance Act, 1894, says that where any property passing on the death of the deceased is situate in a foreign country, and by reason of such death any duty is payable in that foreign country in respect of that property, an allowance of the amount of that duty must be made from the value of the property. It will be noticed that neither this provision nor s. 20, *supra*, exempts property from duty; they enable, directly or indirectly, a deduction to be made from the English duty payable. (Section 7 (4) may help when Mr. Lewis values the Spanish assets.)

Section 54 of the Finance (No. 2) Act, 1945, authorises the making of agreements with the government of any territory outside the United Kingdom, "with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and any duty of a similar character imposed under the laws of that territory." Where arrangements have been made under this section, two particular results follow: s. 7 (4) of the Finance Act, 1894, mentioned above, does not apply, nor can any allowance

be claimed under s. 20 of the same Act, also mentioned above. So far, agreements have been made under this section with the U.S.A., Canada, the Union of South Africa, India and Pakistan. It is not appropriate to go into the details of all these agreements in an article of this size, but in general the agreements set out a code for determining the situation of property within the respective territories and then provide for credit for duty paid in the country *where the property is situated* to be given against the duty paid or payable in the other country. Very broadly, therefore, the country in which the property is situated gets the duty and the other contracting country suffers an allowance to be made. (The agreement with the U.S.A. will, of course, be relevant to Mr. Lewis's problems.)

Section 77 of the Finance Act, 1948, provides for arrangements to be made with the government of any territory outside the United Kingdom the laws of which do not provide for a duty similar to estate duty, with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and any duty leviable on, or by reference to, death imposed under the laws of that territory. So far agreements have been made under this section with the Netherlands and Switzerland, neither of which, of course, affects Mr. Lewis.

Lastly, it is well known that administration charges cannot be allowed as a deduction for estate duty purposes, but it is probably not so well known that s. 7 (3) of the Finance Act, 1894, provides that any additional expense in administering or in realising property incurred by reason of the property being situated out of the United Kingdom is allowed against the value of the property for estate duty purposes up to a maximum of 5 per cent. of such value. This is a provision which practitioners may easily overlook.

*(To be concluded)* B. S. K.

# MORE "TIMOROUS SOULS"

One of the more tiresome and not infrequent tasks of a legal practitioner is explaining the vagaries of the law to his client, who is sometimes amused if the vagary is perchance to his advantage, but is more often angry and amazed when it is not. It is even more difficult to explain why a judge who begins his judgment by roundly declaring that his sympathies are with your client finishes up a few judicial sentences later giving judgment for the other side. Law and justice are not, we know, the same, but it often comes as a rude and expensive shock for litigants when they discover this hard fact for the first time. Imagine, for example, the surprise and dismay of the plaintiffs who have suffered financial loss as a result of a negligent mis-statement and have received the blessing of judicial sympathy but no compensation. Two further attempts have been made recently to find a basis for an action for damage caused through negligent mis-statements. Both these attempts failed and the law on this point seems for all practical purposes as definite as it is unjust. Probably to found such an action, as Denning, L.J., said in *Candler* v. *Crane, Christmas & Co.* [1951] 2 K.B. 164, at p. 178, would mean creating a new action entirely, which he personally was not adverse to doing, but he warned us that in the past whenever such a course had been taken there had been a wide division of opinion on the bench. "On the one side there were the timorous souls who were fearful of allowing a new cause of action. On the other side there were the bold spirits who were ready to allow it if justice so required."

### Timidity at first instance

In *De Savary* v. *Holden Howard & Co.*, (1960), *The Times*, 12th January, the plaintiff was the managing director and virtual owner of three companies all of which were indebted to a bank. The plaintiff was, however, anxious for further financial assistance from the bank and it was suggested by the bank and agreed to by the plaintiff that the bank should arrange for an independent investigation of the companies' affairs by the defendants, who were a reputable firm of accountants, at the plaintiff's expense. The defendants carried out their investigation, prepared accounts and submitted them to the bank. The accounts eventually came into the plaintiff's hands. The figures for stock and work in progress and the figure for profits shown in the accounts were in fact inaccurate. On the strength of the accounts the plaintiff was encouraged to embark upon a programme of expansion which contributed to a large extent to the failure of the plaintiff's companies. Barry, J., held that the defendants were not liable to the plaintiff for negligence as he was bound by the decision of the Court of Appeal in *Candler's* case, which decided that a careless mis-statement was not actionable unless there was a contractual or fiduciary relationship between the parties. His lordship in this case seemed to have been influenced to some extent because "there was a complete lack of any evidence that the defendants were ever told that their accounts were to be used or relied on by the plaintiff for any purposes." However, this was not the basis for the decision. The basis was that there was no cause of action in the circumstances.

McNair, J., came to the same reluctant conclusion in *Hedley Byrne & Co., Ltd.* v. *Heller & Partners, Ltd.* (1960), *The Times*, 21st December, where the facts were even more extreme. The plaintiffs, who were advertising agents, undertook to place on credit terms substantial orders for advertising time on television and for advertising space in the newspapers for Easipower Co., Ltd. As the transaction involved the plaintiffs becoming personally liable to the television and newspaper companies they requested their bankers to make inquiries from the defendants, who were Easipower's bankers, as to the credit worthiness of Easipower. The defendants gave satisfactory references as to Easipower's financial position, although at the time they knew that Easipower had a £50,000 overdraft and was only kept afloat by the defendants extending the limit of the overdraft. Subsequently Easipower gave instructions to the plaintiffs to cancel all existing advertising contracts. This was done, but there remained a liability of £17,662 regarding commitments which could not be cancelled. Easipower went into liquidation and the plaintiffs proved and received £2,208. They then sued the defendants for negligence to recover the remaining sum. There was no doubt here that the defendants knew when they gave the reference that the plaintiffs would rely on it. It was not like *De Savary's* case where the plaintiff was probably outside the area of foreseeable harm. The plaintiffs here were within the "area of proximity." However, McNair, J., having expressed the customary words of judicial sympathy, held that the plaintiffs' claim failed. It was clear from the

authorities that the defendants' only duty was to give an honest answer, which they had done. No action lay for damage resulting from negligent mis-statements unless there was a contractual or fiduciary relationship between the parties.

It is a little too much to expect that either of these judges at first instance would grant a remedy which the Court of Appeal had been too timorous to give. No doubt they echo the stoic words of Asquith, L.J., at p. 195: "If this relegates me to the company of 'timorous souls', I must face that consequence with such fortitude as I can command."

### The rule and the exceptions

In *Candler's* case the majority gave two reasons for their decision. In the first place it was said that the law did not provide any remedy unless there was a contractual or fiduciary relationship between the parties. It was irrelevant whether the maker of the mis-statement knew or ought to have known that the plaintiff was relying on its accuracy. The principle of *Donoghue* v. *Stevenson* [1932] A.C. 562, does not apply to this type of case. Asquith, L.J., said, at p. 195: "In the present state of our law different rules still seem to apply to the negligent mis-statement on the one hand and to the negligent circulation or repair of chattels on the other; and *Donoghue's* case does not seem to me to have abolished these differences." The second distinct reason given was that an action for negligence only lies where there was damage to the life, limb, health or property of the plaintiff and not where the damage caused was purely financial.

It appears from all this that here is a category of negligence which is very firmly closed, if indeed it was ever open. There are, however, certain exceptions which might assist the plaintiff. The House of Lords in *Nocton* v. *Ashburton* [1914] A.C. 932, established that, if the plaintiff and defendant were in a fiduciary relationship, an action could be brought even where the statement was merely made with negligence and without fraud. Similarly, if a contractual relationship can be established a cause of action lies: see *De la Bere* v. *Pearson, Ltd.* [1908] 1 K.B. 280. However, the scope of a remedy in contract is restricted by the contract rule that no one who is not a party to a contract can sue or be sued on it. Denning, L.J., has suggested in *Smith and Snipes Hall Farm* v. *River Douglas Catchment Board* [1949] 2 K.B. 500, that the privity of contract doctrine has been generally misunderstood. In any case its effect was successfully evaded by the plaintiff in *Wooldridge* v. *Stanley Hicks & Son* [1953] C.P.L. 700. In this case the plaintiff wished to borrow money from his bank in order to purchase a house. The bank instructed the defendants, who were surveyors, to carry out a survey of the property. A postscript to the instructions provided that the plaintiff expressly requested that the defendants should pay particular attention to dry rot and woodworm. After purchase, it was discovered that there was a bulge in one of the walls and that dry rot was present, neither of which had been detected by the defendants. The plaintiff claimed damages for negligence. Ormerod, J., held that the plaintiff was not entitled to damages on account of the bulge as the defendants were making the survey for the purposes of the mortgage and there was no contractual relationship between the plaintiff and the defendants, but as far as the matters stated in the postscript were concerned, these were extraneous to the survey for the purposes of the mortgage, and in respect of those matters the defendants were acting for the plaintiff and not the bank, and the plaintiff was entitled to damages for the dry rot. Unfortunately this case is not fully reported. It appears that the plaintiff recovered damages for breach of contract, but how the court arrived at this interesting conclusion is not clear. Here in fact there may be a key to a method of mitigating the stern rule in *Candler's* case.

### Agency in aid

It is not clear how far in these cases the avenues of the law of agency have been explored to evade the privity of contract doctrine. The decision in *Wooldridge's* case may well have been based on agency. The creation of an agency relationship can be a very informal matter (see, e.g., *Ormrod* v. *Crosville Motor Services, Ltd.; Murphie, third party* [1953] 1 W.L.R. 1120), and may well arise in these cases. Take, for example, the facts of *Candler's* case itself. The plaintiff was contemplating investing money in a tin-mining company, but before doing so he wished to see the accounts of the company. The managing director requested the defendants, a firm of accountants, to prepare them. The accounts were specially prepared for the plaintiff and the defendants knew the accounts were wanted by the plaintiff who was considering investing in the company. Is it not arguable that the managing director here was acting as agent for the plaintiff, and the plaintiff as principal is therefore allowed to sue on the contract made by his agent and the defendants? Even if the defendants had not known of the existence of the plaintiff, as long as the managing director was obtaining the accounts for the benefit of the plaintiff, the latter would be able to sue on the contract as an undisclosed principal.

The principles of agency would not, however, avail a plaintiff in all cases. They would not have assisted the plaintiff in *Hedley Byrne's* case, as a reference as to a client's credit-worthiness passing between banks is probably not in the nature of a contract. Nor would the principles of agency have assisted the plaintiff in *De Savary's* case, for the bank wanted the accounts for its own guidance, not for the guidance of the plaintiff as in *Candler's* case. These unfortunate litigants needed the help of "bold judicial spirits."

ANTHONY SCRIVENER.

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### Obituary

His Honour MYLES F. D. ARCHIBALD, county court judge of Circuit No. 12 (Bradford, etc.) from 1952 to 1958, died on 14th March, aged 62. He was admitted in 1923 but called by the Inner Temple in 1934.

Mr. WALTER GORDON BEECROFT, solicitor, of Leigh-on-Sea, died on 6th March, aged 76. Admitted in 1906, he was a past president of Southend-on-Sea and District Law Society.

Mr. HAROLD SEWARD PEARCE, C.B.E., a taxing master of the Supreme Court from 1944–52, died on 7th March, aged 81. He was admitted in 1902.

Mr. SAMUEL JOHN MARTON SAMPSON, solicitor, of Ipswich and Bury St. Edmunds, died on 16th March, aged 77. Admitted in 1908, he was diocesan registrar for the diocese of St. Edmundsbury and Ipswich and had been three times mayor of Bury St. Edmunds.

Mr. CLIFFORD GREEN TURNER, solicitor, of Watford, died on 13th March, aged 80. He was admitted in 1905.

Mr. FREDERICK WILLIAM WESTON, retired solicitor, of London, W.1, and Northwood, Middlesex, died on 3rd March, aged 86. He was admitted in 1898.

# IN WHICH WE SERVE COMPANIES

THERE is judicial authority for the proposition that a limited company has neither a bottom to be kicked nor a soul to be damned. Nor, by the same token, has it legs to run away, a fist to black the eye of a process server, or a shoulder on which a writ can be tapped with a triumphant cry of "Served!", which one has always understood from the earliest days of articles to be the accolade of service.

How, then, is a company to be served?—and we are not talking about the kind of service that leads to the presentation of a suitably inscribed gold watch after twenty-five years. In the case of a genuine company with a genuine secretary and directors, with of course genuine expense accounts if any such things exist, any documents may be served by sending it by ordinary or registered post to the registered office of the company (Companies Act, 1948, s. 107 (1)). It's as easy as that. The letter must be addressed with substantial accuracy, and postage must be prepaid. Unless the contrary appears, the document is then deemed to have been effectively served when it would have been delivered in the ordinary course of post (Interpretation Act, 1889, s. 26).

Alternatively, any document can be served at the company's registered office, where it should be left with a director or secretary, or at least with the person apparently in charge. The secretary of a company can agree to accept service elsewhere, and service on the company's solicitor is valid provided the company subsequently enters an appearance to the proceedings (*Re Denver United Breweries, Ltd.* (1890), 63 L.T. 96).

A summons to appear before magistrates, however, must be served at the registered office of the company, and not even the company's solicitor can waive this requirement (*Pearkes, Gunston & Tee, Ltd.* v. *Richardson* [1902] 1 K.B. 91).

### Blacker sheep

So far, so good. But what about the less genuine companies whose activities are certainly not mentioned in the *Financial Times*, except perhaps in somewhat embarrassing circumstances? As like as not, letters addressed to them will come back marked "Deceased" or "Building Demolished," and their registered office as known at Bush House may be anything from the address of a flash firm of accountants to a disused railway arch. In any event, no officer of the company will ever be available there, so that service by the usual rules becomes impossible.

There are a series of nets, so to speak, of ever decreasing mesh designed to catch these slippery eels. Where the registered office cannot be found, the document can be served at the office where the company actually carries on business. If it does not do so, service may be possible on one or more of the late officers of the company. It would seem that, when this sort of difficulty arises, what is or is not good service is a matter of fact for the court to decide. In this connection it might be worth mentioning that, where all the officers of a company had disappeared and the registered office had been demolished, service on a workman on the site was held to be bad service on the company. This was apparently going a little too far.

As nearly everybody knows, the Scots have the same individualistic ideas about law as they have about money, and it may be for this reason that service on Scottish companies is given special treatment by s. 437 (2) of the Companies Act, 1948. It can be by post to the registered office of the company in Scotland, but if the company carries on a business in England, it can also be by post or delivery to the manager or other principal officer of its English office or shop, copy to the Scottish registered office. It must carry on business from its own premises in England, however; doing so merely through an agent is not good enough.

It is of course possible that one may be faced with the problem of serving something on a company carrying on business in England but registered in, say, Andorra or Liechtenstein, or somewhere equally improbable. But do not despair. However advantageous this may be for tax purposes, s. 407 of the Companies Act says that a company registered abroad and carrying on business in this country must file with the Registrar of Joint Stock Companies a statement, *inter alia*, of the names and addresses in this country of persons authorised to accept service of documents on its behalf. If this has not been done, or if the persons cannot be found, process can be served by leaving it at or sending it by post to any place of business of the company in Great Britain (s. 412). And this does not just mean England.

### Winding up

The Companies (Winding-up) Rules, 1949, make special provisions for the service of documents in winding-up proceedings. They can of course be served by post or delivery at the company's registered office. If there is no longer such a thing, they can be left with any member, officer, or servant of the company at its principal or last-known principal place of business. Failing that, the best bet is to seek the direction of the court as to how to serve (r. 29). A solicitor specially appointed for the purpose can be served, and in winding-up proceedings service by post is deemed to be effective at the time when the letter would normally have been delivered, even if in fact it is returned by the Post Office (r. 23).

Quite apart from the provisions of the Companies Act, 1948, if all else fails there is nothing to stop a person wanting to serve a writ or summons from going to the court to get an order for substituted service under R.S.C., Ord. 10 (surely the only ruleless order?) or C.C.R., Ord. 8, r. 6. Service by advertisement in a newspaper or care of some bank, firm of solicitors or accountants, can be ordered, just as it could be in respect of an individual.

Though the younger generation may find it hard to believe, there are more reasons for forming, or perhaps buying, a company than the acquisition of a lovely expense account. As one of them is, strangely enough, the desire to limit financial liability, it follows that the less successful examples often find themselves the target for a bombardment of writs, summonses, and winding-up notices. Barred doors, empty places of business and disappearing registered offices may be frustrating, but the determined plaintiff, armed with a little common sense, and perhaps a bit of low cunning, should be able to overcome all these difficulties. Perseverance pays.

J.

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LAW SOCIETY LUNCHEON

The President of The Law Society, Mr. Denys T. Hicks, gave a luncheon party on 16th March, at 60 Carey Street, W.C.2. The guests were The Bishop of London, Sir Oliver Franks, Mr. Justice Widgery, Dr. Francis Camps, Mr. J. S. Williams, Mr. A. M. Goulding, Mr. Arthur J. Driver (vice-president, The Law Society), Mr. W. J. Taylor and Sir Thomas Lund.

# WHEN IS AN INCIDENT AN ACCIDENT?

IT would be difficult to dispute the proposition that the key section of the National Insurance (Industrial Injuries) Act, 1946, is s. 7. That is the section which provides for the payment of industrial injury, disablement or death benefit where an insured person suffers personal injury or death caused by an accident arising out of and in the course of his employment. Subsection (4) further stipulates that for the purposes of that Act an accident arising in the course of an insured person's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment. In October, 1959, we considered certain decisions of the Commissioner which threw light on how the phrase "accident arising out of and in the course of employment" is interpreted for purposes of national insurance (103 SOL. J. 768 and 787). In particular we reviewed the application of the deeming subs. (4).

A more subtle point exists than questions concerned with whether any particular accident arose in the course of an insured person's employment and, if so, whether it also arose out of it. This, which we did not previously consider, is whether any particular incident at work giving rise to a claim amounted to an accident. If, for purposes of an industrial injuries claim, what the claimant terms an accident is not held to be an accident at all, then whether it arose out of and in the course of the employment is of no more than academic interest. What we are currently considering is whether any guidance is available on what incidents at work are likely to pass for accidents for purposes of industrial injuries insurance, and what insured persons and their employers should do to reduce the risks of accidents being deemed by the national insurance statutory authorities to have been no more than non-insurable incidents.

### Injury following strain

The question whether any particular incident at work, which gave rise to an industrial injuries benefit claim, constituted an industrial accident occurs rarely amongst the reported decisions of the Commissioner. Nevertheless, several decisions throw some light upon this aspect. From these reports it seems, first, that the question is most likely to arise in connection with an injury following or caused by a strain (a "strain" not amounting to "injury" unless there is some significant physiological change for the worse which lasts for an appreciable time—R (I) 19/60); and secondly, that the biggest hurdle facing the claimant is the burden of proof resting on him.

Two of the earliest relevant decisions illustrate cases falling on either side of the insurability line. In C.S.I. 20/49, the claimant had undertaken heavier work, involving lifting and laying steel bars, than that to which he was accustomed. Some five months later he had to stop work owing to the condition of his right wrist, it being claimed that the swelling and pain of the wrist had first been noticed about a month after commencing that work and had subsequently become progressively worse. He obtained a medical certificate of incapacity and later a regional medical officer of the Department of Health for Scotland certified that the claimant seemed to have a fracture of the scaphoid bone of the right wrist which was probably associated with his work, although there was no history of any specific accident. The claimant in his grounds of appeal stated that at the time of the incident he had reported to a nurse, who indicated that there was a sprain and applied a bandage. Although the Commissioner had doubts about interfering with the decision of the local tribunal, which was adverse to the claimant, he did find that there had been an injury by accident and accordingly allowed the appeal.

In C.S.I. 25/49, the claimant, who was a coal miner, was incapacitated for some seven weeks and received sickness benefit. Subsequently he claimed to have been incapacitated during that period through injury by accident sustained at his work. He contended that the incapacity for work was caused by a number of small accidents sustained while shovelling in a confined space with a low roof and culminating in injury to his shoulder three days before his first day of incapacity for work. He did not report the matter at once because it was a long weekend and he thought the shoulder might right itself. At first he was certified as incapacitated by conditions variously described as myalgia, neuritis of arm, pain in shoulder, tenosynovitis, myalgia in deltoid region and synovitis. Later the question of an accident arose upon his being certified as suffering from "supra spinatous tendonitis." Here the Commissioner upheld the local tribunal's disallowance of the claim because, although he was prepared to assume that the claimant might have strained himself and that a strain or succession of strains might have brought on the condition which incapacitated him, the onus was on the claimant to prove that there was a strain or a succession of strains which had caused the condition, and the reasonable requirements of proof had not been satisfied.

### Inadequate reporting of accident

Several cases illustrate how claimants caused difficulties for themselves in pursuing their claims by failure to report promptly or at all the accident which caused the incapacity. In R (I) 2/51, an industrial injury benefit claimant stated that he had sustained a hernia whilst lifting a large board on to a table in the course of his employment one week before he saw his doctor, who then certified him incapable of work owing to a right inguinal hernia. The claimant said that he felt a strain at the time and a lump in his right groin but, not realising the significance of these events, he did not report the occurrence as an accident. He did not complain to any fellow workman and continued to work for a further week. After seeing his doctor he was off work for a fortnight and then returned with a truss. The employers knew nothing about the alleged accident and no corroborative evidence was available. In these circumstances the local insurance officer ruled that there had not been an industrial accident and the local appeal tribunal by a majority dismissed the claimant's appeal on the ground that there was no evidence corroborating his statement. The Commissioner allowed the claimant's appeal, explaining that, though the claimant had to prove that the hernia resulted from an accident arising out of and in the course of his employment, he was not bound to prove this beyond all reasonable doubt. For the claim to succeed it was sufficient if from the evidence as a whole the balance of probability led to the conclusion that the hernia did result from an industrial accident. Such a conclusion—which could be drawn here—might be based on the evidence of the claimant alone because there was no rule of English law that corroboration of such evidence was necessary. Although in some cases a tribunal might think that they could not act on the claimant's uncorroborated

evidence because it was self-contradictory or inherently improbable, or because they did not believe him (though it was seldom safe to reject evidence solely for this last reason), these factors did not exist in this case.

Two other cases resemble the last one with variations on the theme of inadequate reporting of the accident. In R (I) 53/51, the claimant, a woman of forty-six who was employed as a perfumery packer, attributed her incapacity for work to the straining of her back while lifting carboys in the course of her work. The particular incident was not reported to the claimant's employers, although a fellow-worker was aware of the occurrence in question. A variety of diagnoses was made by the claimant's doctor for her varying periods of incapacity, and it was not until nearly four months after the incident that a hospital X-ray revealed a spinal lesion and a specialist expressed the opinion that this had been caused by lifting at work. The Commissioner (with some doubt) allowed the claimant's appeal and referred to the fact that there was direct evidence that lifting the carboys did cause her pain which culminated at the time she ceased work. In R (I) 59/52, the claimant was a lad of seventeen employed by a firm of grocers. He alleged that when unloading a van containing 12 lb. parcels of flour he felt pain in one wrist when he handled one parcel awkwardly. He then suspected only a slight strain and the next day strapped his wrist and continued working for about three weeks until the wrist became worse and he consulted a doctor, who diagnosed a fracture of the scaphoid. The accident had not been reported to the employers; the claimant had mentioned it to two workmates who were with him at the time of the accident but for reasons unspecified those witnesses refused to corroborate the claimant's statement. Between the time of the dismissal of the claimant's appeal by the local tribunal and the appeal to the Commissioner, the claimant's doctor wrote a letter in support of his claim. In the light of all the circumstances the Commissioner held that the claimant had sustained an industrial accident and allowed the appeal.

### Onus of proof not satisfied

In all the seven other relevant reported decisions of the Commissioner the claimants failed to discharge the onus of proof that an industrial accident had occurred. Four of these were published primarily because they contained summaries of medical evidence which it was thought would be found useful by local appeal tribunals and local insurance officers when having to decide cases of similar type.

The cases not reported as medical decisions inevitably also touched on medical factors. The decision C.S.I. 80/50 concerned a claimant who operated a radial tapping machine and who became incapable of work because of a septic thumb. He said that he "was always getting jags" in his work. In allowing the insurance officer's appeal the Commissioner considered that the claimant had not discharged the onus of showing either that in the course of his work he did sustain a jag or other injury to the septic thumb or that, his thumb having been injured in some way, not necessarily in the course of work, the septic condition developed from the conditions of his work.

In R (I) 19/60, a miner, who in the course of his work had to lift derailed coal hutches from time to time, strained himself in this connection; over twenty-four hours later he suffered a coronary occlusion. The claimant was unable to establish that the coronary occlusion was brought on by the strain at work and his appeal failed. In R (I) 3/52, a welder attributed his eye condition to exposure to glare or ultra-violet rays or a spark following the welding of a water main for about an hour when he could not use the usual form of protection for his eyes. The Commissioner held that the evidence did not establish personal injury by accident and that in any event the medical evidence showed that even if he had suffered such an injury his incapacity did not result from it.

In three of the cases reported on account of the medical evidence concerned, the claimant suffered from a "prolapsed disc" (R (I) 20/56, R (I) 35/59 and R (I) 12/60), and the remaining case required a decision whether a detached retina which impaired the claimant's vision was the result of a strain (R (I) 39/59). As indicated above, in every one of those cases the claimant failed to prove that there had been an industrial accident.

### Conclusion

Although indications of the validity of any claim in the light of the medical evidence are beyond a claimant's control, this review of the cases concerning attempts to bring incidents at work within the meaning of "accident" for the purposes of the Industrial Injuries Acts indicates what actions a prudent potential claimant should take when an incident, even if apparently a minor one, occurs. He should never suffer in silence and cheerfully carry on at work for as long as he can endure to do so. He should immediately report any incident to his employers and have an entry made in any accident book kept for the purpose. Further, he should seek out those of his workmates who would be willing to give evidence for him and leave them in no doubt as to the nature of the incident and whatever after-effects took place. He should seek medical advice at the earliest opportunity from the most competent source available to him and ensure that a full record of the consultation is made. The account of the incident and its effects must be consistent however often it is told. A claim for the appropriate benefit should be lodged promptly with the local national insurance office. Model employers will encourage all their employees to behave in this way.

N. D. V.

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## THE WEEKLY LAW REPORTS

Cases reported in the issue of the *Weekly Law Reports* dated 17th March include the following:—

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# WHEN PURCHASER PAYS FOR ABSTRACT

BEFORE the war, when estates of ordinary-sized dwellings were being built for sale in various parts of the country, the majority of houses changed hands at selling prices under £1,000. Conveyancers acting for purchasers of houses with a registered title regarded s. 110 (1) (*a*) of the Land Registration Act, 1925, as needing careful noting in the contract for sale.

By this subsection, unless the purchase money exceeds £1,000, in the absence of any stipulation to the contrary, the costs of copies and abstracts of entries in the register, plans and documents, shall be borne by the purchaser who requires them. This meant that, unless the purchaser's solicitor inserted a clause in the contract negativing the effect of the subsection, the purchaser, who under the Act is entitled at the vendor's expense to an authority to inspect the register (a statutory duty out of which the vendor cannot contract), had to bear the cost of copies of the subsisting entries in the register, filed plans, and copies or abstracts of any documents or parts noted on the register, so far as they affected the land being sold, except charges or incumbrances registered or protected on the register which were to be discharged or overridden at or prior to completion.

Of course, this is at variance with the usual practice of the vendor, at his own expense, deducing a title in accordance with the contract, or, in cases where no contract has been entered into, the vendor preparing and delivering to the purchaser, free of charge to the latter, an abstract of title covering the statutory period, generally thirty years.

In these days of inflated selling prices, when many properties are fetching five times their pre-war value, and bearing in mind that the purchaser, for a shilling or two, can obtain from the Land Registry official office copies of the property, proprietorship and charges registers, with filed plan, which, in most cases, comprise the abstract of title, there is no hardship caused when this stipulation is omitted from the contract. In practice, the vendor usually supplies these copies at his expense.

When the abstract includes copies of documents that are referred to on the register as affecting the land (these are most likely to be disclosed by being noted in the contract) in appropriate cases of selling prices not exceeding £1,000, the purchaser's solicitor should insert a suitable condition in the contract providing for the deducing of title at the vendor's expense, the abstract to comprise official office copies.

### Advantage of official copies

The advantage of official office copies is that such copies do not require verification. By s. 113 of the Land Registration Act, 1925, such copies shall be admissible in evidence in all actions and matters to the same extent as would the originals. Furthermore, these filed copies as supplied by the Land Registry are deemed to be complete and correct. Should they be found to be otherwise, and loss is sustained, the person suffering such loss has a claim to compensation out of the Land Registry insurance fund, standardised at £100,000.

Regarding s. 110 (1) of the Act and the exception from the documents to be furnished to the purchaser of charges or incumbrances to be discharged or overridden at or before completion, one still finds vendors' solicitors going to the unnecessary trouble of abstracting registered charges that are to be discharged at or before completion and purchasers' solicitors unnecessarily asking for them to be abstracted. Solicitors acting for purchasers are concerned to see that such charges, which are noted in the copy of the charges register delivered to them as part of the abstract of title, are discharged before completion, or (and this is more often the case) that the usual evidence is produced at completion for their discharge and subsequent removal from the register. An undertaking to do so within a limited time is given.

Discharge of a registered charge is popularly effected, as to the whole or part, by Land Registry form 53. Alternatively, especially in the cases of mortgages to building, friendly, provident and industrial societies, the form of discharge may be that authorised by the statute governing the societies.

### Section 20 of Building Societies Act, 1960

In this connection, attention is drawn to s. 20 of the Building Societies Act, 1960, dealing with the sealing of receipts endorsed on mortgages. This section refers to s. 42 of the Building Societies Act, 1874, under which a mortgage of land given to a building society may be discharged by endorsing a receipt under the seal of the building society countersigned by the secretary or manager. Section 20 of the 1960 Act provides for an important alteration to be made in the form of receipt prescribed by s. 42 of the 1874 Act. The words "countersigned by any person acting under the authority of the board of directors or committee of management of the society" are to be substituted for the words in the 1874 Act, "countersigned by the secretary or manager." Section 20 (2) of the 1960 Act provides that at the end of the form of receipt in the Schedule to the 1874 Act for the words "Secretary [*or* Manager]" there shall be substituted the words "by authority of the board of directors [*or* committee of management]." By s. 20 (3) of the 1960 Act, the section shall extend to Northern Ireland so as to apply to mortgages of land in Northern Ireland for securing advances by building societies as defined in the 1960 Act.

Boards of directors and committees of management of building societies are assumed to have passed the necessary resolution of authorisation, which, it is further assumed, is in accordance with their rules. The mortgagor's or purchaser's solicitor should, therefore, ensure that the form of receipt complies with these latest statutory provisions and uses the precise words of the Act at the end of the receipt.

In cases where societies use the statutory receipt under s. 115 of the Law of Property Act, 1925, s. 115 (9) of the 1925 Act states that the provisions of the section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a buiding, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society.

Section 115 (5) of the 1925 Act states that a receipt may be given in the form contained in Sched. III to the Act, with such variations and additions, if any, as may be deemed expedient.

It will be seen, therefore, that although a somewhat free hand is allowed in the matter of the form of a receipt under s. 115, if it is used instead of the form prescribed by the Building Societies Act, 1874, it must be executed in the manner required by the 1874 Act as now amended by the 1960 Act, that is to say, the receipt at the end must contain

the words (see s. 20 of the 1960 Act) "by authority of the board of directors [or committee of management]."

### Amend Land Registry form 53?

Does the Land Registry form 53 for the discharge of a registered charge need amendment to bring it into line with s. 20 (2) of the 1960 Act? Under r. 152 of the Land Registration Rules, 1925, form 53, when used by an incorporated building society, is to be sealed and countersigned by the secretary of the society. By r. 151 the Chief Land Registrar is granted the liberty of accepting and acting upon any other proof of satisfaction of a charge which he may deem sufficient.

It is understood that the Land Registry do not propose altering r. 152 in the light of s. 20 of the Building Societies Act, 1960, but have expressed the opinion that if a discharge of a building society mortgage is evidenced by the use of Land Registry form 53 sealed and countersigned by a person whose signature is expressed to be "by authority of the board of directors [or committee of management]" they will not raise any question as to the authority of the person so signing. The words of newly acquired significance "by authority of the board of directors [or committee of management]" should, therefore, appear on all forms of receipt mentioned in this article, including Land Registry form 53. Where they appear in cases of discharge of registered charges, they will secure the removal of the entries from the charges register.

What about discharges of mortgages of unregistered land? In addition to checking that the significant words appear in the receipt, should the conveyancer ask for evidence that the counter-signature is that of a person who has been authorised by the board of directors or committee of management? If a letter of confirmation is asked for by the mortgagor's or purchaser's solicitor, would it be given? There is no harm in asking for it. If it is refused, then the solicitor will probably be content to share the faith of the Chief Land Registrar that the words mean what they say, and are true.

Recently there was an interesting correspondence on this subject of receipts in the *Building Societies' Gazette*. A letter writer, himself a London solicitor, crossed swords with the journal's legal correspondent, who had advocated the incorporation of the words "by authority of the board of directors" in s. 115 receipts. The letter writer pointed out that s. 115 only provided that the receipt must be executed in the *manner* required by the building societies statutes and not in the *form* required by those statutes. In other words, receipts under s. 115 must, in fact, be executed in the presence of a person authorised by the board, but there is no need for the receipt to say so. The legal correspondent, in reply, put it this way: "Section 115 (9) of the Law of Property Act, 1925, makes us ask 'What is the manner required by the Building Societies Acts for the execution of receipts?' One answer is that the Building Societies Acts do not *require* anything; s. 42 of the 1874 Act is entirely permissive ('the society may endorse, etc.'). But if s. 115 (9) does mean something—as Mr. Bracewell and I assume—then I personally think it can only mean that the *execution* of the receipt should be in the manner detailed in the amended s. 42 read with its amended Schedule, which includes the magic words. If a doubt exists, as it presumably does, I think the practical course is to add the words to s. 115 receipts for two reasons. First, to be on the safe side (and this is not so much a counsel of timidity as an acknowledgment of equivocal parliamentary drafting); and secondly, to allow building societies confidently to execute both kinds of receipts in the same way, at practically no extra trouble." W. A. G.

## Landlord and Tenant Notebook

# BUSINESS TENANCY: COMPETENT MESNE LANDLORD

THE decision in *Westerbury Property & Investment Co., Ltd.* v. *Carpenter* [1961] 1 W.L.R. 272; p. 155, *ante*, was one which, Danckwerts, J., said at the commencement of his judgment, involved difficult points under that difficult Act, the Landlord and Tenant Act, 1954. (The learned judge had Pt. II in mind; Pt. I rarely troubles the Chancery Division.)

The proceedings were consolidated proceedings, the plaintiffs having sought a declaration that they had given the defendant an effective notice to terminate under Pt. II of the Act, and having launched an action for possession. Looking at the situation from the defendant's point of view, the facts were as follows.

In 1948, she had taken a three years' under-tenancy of the first floor of a building owned by the plaintiffs' predecessor in title, both she and her immediate landlords carrying on business on the premises. When the three years expired she held over as a yearly tenant: the Act had not yet been passed. The immediate landlords, Messrs. P. & G., Ltd., held a lease running from 25th March, 1946, to 25th March, 1960, but, when the plaintiffs served them with a notice to terminate on 25th March, 1960—which was served well in time, namely, on 10th August, 1959—they had not taken the trouble to serve the defendant with a notice to quit or a notice to terminate. When she did receive a notice to terminate, or what purported to be such, it was the plaintiffs who gave it: this was on 22nd January, 1960, and it was to expire on 31st July, 1960.

In the meantime, Messrs. P. & G. had (i) filed an application for a new tenancy (on 8th December, 1959), and (ii) withdrawn that application (on 29th January, 1960) and quitted the premises.

The defendant contended (i) that the notice to terminate was ineffective because given for the wrong date; alternatively (ii) that it was ineffective because the plaintiffs were, on 22nd January, not her "competent landlords."

### Date of notice

The argument on this point was that as the tenancy was a yearly one it could be determined only by six months' notice expiring with an anniversary, so that 25th March, 1961, would be the earliest date. It was argued that s. 25 (3) of the Landlord and Tenant Act, 1954 ("In the case of a tenancy which apart from this Act could have been brought to an end by notice to quit given by the landlord, the date of termination . . . shall be not earlier than the earliest date on which apart from this Part of this Act the tenancy could have been brought to an end by notice to quit," etc.) governed the position.

The fallacy was this: you cannot use the "apart from [this Part of] this Act" when it suits you and ignore it when it does not. On 22nd January, 1960, the mesne term was due to expire on the next ensuing 25th March: so the sub-tenancy could not have been brought to an end by notice to quit given by the landlords, Messrs. P. & G., at all. Hence subs. (4) applied, requiring merely that a notice to terminate should not specify a date earlier than the date on which apart from Pt. II of the Act the tenancy would have come to an end by effluxion of time. It would—apart from, etc.—have come to an end by effluxion of time when the mesne term came to an end, on 25th March.

### Competent landlords

The second point was less easy. "The landlord," in relation to a tenancy, means, according to s. 44 (1), the person (immediate landlord or not) who is the owner of that interest which fulfils two conditions: it must be an interest in reversion expectant, etc., and it must be either the fee simple or a tenancy which will not come to an end within fourteen months or less by effluxion of time or by virtue of a notice to quit already given by the landlord, etc.; and the defendant's contention appears to have been that Messrs. P. & G. satisfied the conditions on 22nd January, 1960, as they then held a tenancy which would not come to an end by effluxion of time or by virtue of a notice to quit already given by the landlord. ("Notice to quit" for this purpose means a common-law notice given by an immediate landlord: s. 44 (2).)

Argument centred on the meaning of "a tenancy which will not come to an end within fourteen months or less by effluxion of time or by virtue of a notice to quit already given by the landlord" and, holding that Messrs. P. & G.'s tenancy was such on 22nd January, 1960, Danckwerts, J., said that he had first been inclined to say that the words referred to a tenancy not under the statutory provisions but under the contractual provisions between the landlord and the tenant; but that that seemed to be contrary to the law as stated by the Court of Appeal in *Cornish* v. *Brook Green Laundry, Ltd.* [1959] 1 Q.B. 394 (C.A.). Consequently, the plaintiffs were not the defendant's competent landlord on 22nd January, 1960.

The point was a new one and not one which fell to be examined in the article entitled "Hunt the Landlord" in our issue of 29th January, 1960 (104 Sol. J. 77), which dealt with the position which arises where there are several derivative interests, but we believe that the writer would share our doubts about the reasoning adopted by Danckwerts, J. This is because, while the learned judge recognised a distinction between a contractual business tenancy and a statutory business tenancy, he did not distinguish between a business tenancy which has been continued and one which will be continued only if certain conditions be fulfilled. The mesne tenants concerned in *Cornish* v. *Brook Green Laundry, Ltd.*, had held a lease which had expired by effluxion of time on 28th September, 1956, and the sub-tenant, whose sub-lease had expired three days earlier, applied for a new tenancy in October, 1957; she first made the mesne tenants respondents, but then joined the freeholders, and when it was decided against her that the mesne tenants were entitled to establish and had established a ground of opposition, urged that they were not her competent landlord. The judgment on this point was expressed (by Romer, L.J.) in these terms: "We are satisfied that the definition in s. 69 [the definition of 'tenancy' as a tenancy created either immediately or derivatively out of the freehold, whether by lease, agreement, etc., or in pursuance of any enactment, including the Act] was not intended to exclude tenancies which, if not strictly 'created' by the Act, were given a statutory extension of life on the terms prescribed by the Act." In my respectful submission, a distinction should be drawn between tenancies which may be and tenancies which have been extended. On 22nd January, 1960, Messrs. P. & G.'s mesne tenancy was due to expire on 25th March, both by effluxion of time and by virtue of notice to terminate, and if the application of 8th December, 1959, had ever succeeded, the existing tenancy would none the less have been determined. This, I respectfully submit, suggests that Danckwerts, J.'s first impression of the meaning of the words "a tenancy which will not come to an end within fourteen months or less by effluxion of time or by virtue of a notice to quit already given by the landlord" was correct.

R. B.

# HERE AND THERE

## JUSTICE FROM HEAVEN

The committee which, having meditated since June, 1958, has just produced some startling and stimulating proposals for the speeding up of our courts, has suggested, among its new and bright ideas, that during the Long Vacation a "flying squad" of three judges should swoop on various assize towns to hold supplementary assizes. The mental picture conjured up is very far removed from that of the static symbolic lady, blindfold and holding a pair of scales, who satisfied our leisurely and classically-minded forefathers, and rather suggests a hawk swooping from the skies unerring with beak and claws. After all, the hawk does give that on which he swoops the swiftest sort of decision as to its fate. He has speed and accuracy, and that is what we are told is wanted in this day and age. Or perhaps, less symbolically, the judicial flying squad should be envisaged as three men in a hovercraft or helicopter brooding over the coloured counties of England and Wales, scanning the landscape for signals of distress from cathedral towers and town hall balconies or blazing beacons on Cambrian mountain peaks, signifying that thereabouts were gaols bursting to be delivered, lest a miscarriage of justice might supervene. Viewing the signals from afar, they would descend with equal alacrity in the Close at Salisbury or the municipal playing fields of Manchester and set to work, there and then, on the emergency operation of bringing justice to birth. After a little practice, they could make it a parajudge operation, descending from the skies in billowing scarlet at the end of parachutes suitably emblazoned with the Royal Arms and other emblems of judicial authority. *Fiat justitia; ruat judex de coelis* might be the motto of the Queen's Flight Division of the Sky High Court of Justice.

## BLENDING IN TRADITION

There is another aspect of this innovation which should obviously not be neglected. The *Law Society's Gazette* recently published an article which suggests that the legal profession should no longer eschew publicity but should initiate "dignified and factual announcements in the advertisement

columns of the national Press." Let us go a step further. This epoch-making innovation of winged justice in a form undreamt of hitherto in the civilised world should have high value as a tourist attraction, especially as it will operate at the very height of the tourist season, and it should be widely advertised. Enterprising travel agencies could run "Chase the Assize Judge" surprise tours, or perhaps they might be Government-sponsored to help to defray the cost of the experiment. In any event, not one jot of assize pageantry should be abated. The English legal system has been singularly adept at grafting the ancient on to the modern, wedding an eighteenth-century wig to a medieval robe, pouring the new wine of innovation into the old bottles of traditional forms. Then let not the county authorities who summon to their aid the flying squad judges in their hovercraft or helicopter by any means omit, say, the assize trumpeters. Indeed, amplified by loudspeakers, their notes might be used to blow the summons skywards, certain conventional calls indicating the number and character of prisoners awaiting trial. Similar effects might be achieved by night by a decorative salvo of rockets, carrying the message by their number and colour. An appropriate emblem of authority could be added to the judges' procession to court. On suitable occasions the Admiralty oar is borne before Lord Merriman; the flying justices should be preceded by an officer carrying a symbolic propeller. We are always being told now that swiftness is of the essence of justice. It would be difficult to exaggerate the impression made on the prison population by this sudden god-like descent from the clouds of Justice personified. The law has long lain tangled and helpless in the web of the ancient circuit formalities. The *judex ex machina* can solve all her problems.

RICHARD ROE.

# REVIEWS

**The Law of Stamp Duties.** Third Edition. By J. C. MONROE, B.A., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. pp. xviii and (with Index) 298. 1961. London: Sweet & Maxwell, Ltd. £2 2s. net.

This is an excellent book. The appearance of the first edition in 1954 was hailed with delight not so much for its intrinsic merits, though these also were recognised, as for its originality. Never before had the unpleasant topic of stamp duties been expounded in narrative form. The result was, so far as its subject-matter could possibly permit, both comprehensible and readable. Accordingly, this, the third edition, no longer retains the full novelty of the first edition, but instead it can rely for support on its other merits, with which, no doubt, very many readers are already familiar. Primarily designed as a student's text-book, it has not only fulfilled this purpose, but has been accepted for use by practitioners. The present edition is amply justified by the unusually high number of important decisions (including four of the House of Lords) since the previous edition in 1956. In addition, the principal statutory provisions in force relating to stamp duties are now set out in an appendix and a new chapter on unit trusts has been included. Apart from these major matters, there are a large number of detailed amendments. In particular, one irritation of the earlier editions has been removed, namely, the recording of the regnal year and chapter in a footnote every time a statute was cited, which the Stamp Act, 1891, was on nearly every page. Now this practice has been restricted to once per statute. Mr. Monroe's masterpiece should be regarded as one of the less expensive essential items of equipment of both students and practitioners.

**Essays in Criminal Science.** Edited by GERHARD O. W. MUELLER. pp. xvi and 460. 1961. London: Sweet & Maxwell, Ltd. £3 10s. net.

This collection is a *Festschrift*, presented to the *Journal of Criminal Law, Criminology and Police Science* and to its editor-in-chief, Dr. Robert Harvey Gault, on the double occasion of the *Journal's* golden jubilee and Dr. Gault's retirement after fifty years as editor. The Comparative Criminal Law Project of New York University, under its director, Gerhard O. W. Mueller, has brought together the "gift-essays" of eighteen criminologists from four different continents, as a tribute to the journal and its distinguished editor; there are contributions on the general science of criminal law, the quest for new ideas in criminology, problems of forensic medicine and law reform in foreign countries, including the Soviet Union and Japan.

To the practical lawyer many of these academic studies will be hard going: in particular, the American contributions seem to combine platitudinous high-mindedness with deep learning to produce the most modest conclusions. For example, Professor Helen Silving, described here as "truly . . . the First Lady of American Criminal Law," after a seventy-seven page study of "The Rule of Law in Criminal Justice," packed with historical knowledge and references to comparative law, can only conclude: "Perhaps in an age of atomic power and of the Unconscious, there is no longer any room for 'criminal law.' So long, however, as such law exists, it should be administered in a manner least infringing upon man's freedom and dignity and, to the utmost possible extent, without increasing the sense of fear pervading our lives." The professor is preaching to the converted in her second conclusion; her first would seem to make her life-work unnecessary. Again, an essay on "Methods of Treatment of Drug Addiction," while revealing the horrifying extent of the narcotic problem in the United States, tells us little of the methods of treatment save that they are to all intents and purposes useless (the relapse rate after lengthy hospital treatment ranges from 85 to 95 per cent.); the conclusion here is that "new methods must be devised."

The shorter contributions seem to be the most rewarding. There is a fascinating investigation by Professor von Hentig, of Bonn, into the problem of returning to the scene of the crime, in which he draws a convincing picture of the abnormal psychological effects on the murderer of his crime. The British contribution, from Dr. Glanville Williams, is a concise and clear article on "Automatism," a subject which has particular interest on this side of the Atlantic at the present time; it is unfortunate that he was not able to include a discussion of the *Boshears* case.

This book will probably not have a wide appeal to the non-academic lawyer, but for those who like to pass a few hours in the rarefied atmosphere of "pure" law and to study the approach of other countries to their criminal problems, there is much of interest to be found here. It is certainly a beautifully produced gift to the man who is given in the foreword the rather fulsome description of the "Nestor of American Criminology."

**The Annual Charities Register and Digest.** Being a classified register of charities. Sixty-eighth edition. pp. (with Index) 446. 1961. London: Family Welfare Association and Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

This annual guide gives up-to-date information about charitable organisations, divided into thirty-four sections according to the work done. There is also a section of miscellaneous information relevant to charitable work and a section devoted to social service statistics. The book is completed by a full index.

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## Wills and Bequests

Mr. MONTIE PHILLIP ARNOLD, solicitor and company director, of London, W.C.2, left £54,728 net.

Mr. GUY DANIEL HARVEY-SAMUEL, solicitor, of London, S.W.1, left £84,311 net.

# NOTES OF CASES

*The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. An asterisk against a case indicates that there is no present intention of reporting it in the Weekly Law Reports.*

## Court of Appeal

### LANDLORD AND TENANT: BUSINESS PREMISES: MEANING OF "LANDLORD"

**Green *v.* Bowes-Lyon**

Sellers, Pearce and Devlin, L.JJ.

17th November, 1960

Appeal from Pearson J. ([1960] 1 W.L.R. 176; 104 SOL. J. 189).

*R* held certain premises under a very long lease. *W* held a sub-lease of the whole of the premises from *R* for a term expiring on 4th April, 1959. The plaintiff held a sub-lease of the ground floor and basement of the premises from *W* for a term expiring on 1st April, 1959. The defendant held a sub-lease of the ground floor only from the plaintiff for a term expiring on 31st March, 1959. Part II of the Landlord and Tenant Act, 1954, did not apply to *W's* tenancy, but applied to the plaintiff's tenancy and that of the defendant. By an instrument dated 19th March, 1958, and called a reversionary lease, *R* granted the defendant a lease of the ground floor of the premises for a term of seven years from 5th April, 1959. In an action by the plaintiff for one quarter's rent due on 24th June, 1959, the defendant contended that s. 28 of the Act applied, that the instrument of 19th March, 1958, was an agreement between the landlord and the tenant for the grant to the tenant of a future tenancy of the holding on terms and from a date, viz., 5th April, 1959, specified in the agreement, that the defendant's tenancy was the "current tenancy" referred to in s. 28 of the Act, and that it was continued by s. 24 of the Act only until 5th April, 1959, and no longer, and was not, therefore, a tenancy to which Pt. II of the Act applied; and that the defendant was not the plaintiff's sub-tenant but the sub-tenant of *R* under the instrument dated 19th March, 1958, which bound the interest of the plaintiff, giving her a right to compensation under the Act. Pearson, J., held that the instrument of 19th March, 1958, was a reversionary lease which by virtue of s. 65 (3) of the Act had effect only subject to the defendant's continuing tenancy. Accordingly, the defendant was the plaintiff's sub-tenant and the plaintiff was entitled to recover the rent claimed. The defendant appealed.

PEARCE, L.J., said that Pearson, J., took a short cut in the matter by saying that the reversionary lease of 19th March, 1958, did not come within the terms of s. 28 of the Act of 1954. His lordship would be inclined to think that the judge was right in the conclusion at which he arrived; but the matter was obviously one of difficulty. There was however a further difficulty which was quite fatal to the defendant. On the authority of *Cornish* v. *Brook Green Laundry, Ltd.* [1959] 1 Q.B. 394, which was binding on the court, *R* was not the landlord under s. 28 of the Act and therefore the defendant could not bring the reversionary lease under s. 28 even if it did not come under s. 65 (3). To find out who "the landlord" was one had to refer to s. 44. In his lordship's view, "the landlord" for the purpose of s. 28 could not be distinguished as a different person from "the landlord" for the purposes of ss. 26 and 30 of the Act. It was not open to the court to hold that that decision was wrong. The appeal failed and must be dismissed.

SELLERS and DEVLIN, L.JJ., agreed.

Appeal dismissed. Leave to appeal, the plaintiff to have costs in any event below and in the Court of Appeal.

APPEARANCES: *Neil Lawson*, Q.C., and *John Wilmers* (*Layton & Co.*); *C. L. Hawser*, Q.C., and *Charles Lawson* (*Tringhams*).

[Reported by A. H. BRAY, Esq., Barrister-at-Law]

### CONTRACT: PENALTY CLAUSE: INSURANCE POLICY

**Alder *v.* Moore**

Sellers and Devlin, L.JJ., and Slade, J.

18th November, 1960

Appeal from Paull, J.

By a policy of insurance taken out on behalf of their members by the Association Football Players' and Trainers' Union with Lloyd's, it was provided that if a member of the union, who was registered as a player, sustained permanent total disablement he would be paid £500. The defendant, a professional footballer and a member of the union, received an injury in the course of a match which caused damage to his right eye. The defendant was certified as totally disabled, and the underwriters paid him the agreed sum, having first obtained from him a declaration pursuant to the terms of the policy as follows: "In consideration of the above payment I hereby declare and agree that I will take no part as a playing member of any form of professional football in the future and that in the event of infringement of this condition I will be subject to a penalty of the amount stated above." Within four months of receiving the money, and without any improvement to his eye, the defendant began to play professional football again. The underwriters claimed the return of the £500. The defendant contended that the payment claimed was a penalty.

SELLERS, L.J., said that the underwriters had chosen to call the payment they wished to recover a "penalty." Why they did so was not clear, but while they ran a risk of being taken at their word the law looked at the substance of the matter and not at the words used, whether "penalty" or "liquidated damages." This was to be regarded as a repayment of a sum in circumstances which were entirely equitable. It was in no way an imposition of a fine or penal payment, and if it had to be made to fall under one head or the other, it was to be regarded as a payment by way of damages for breach of an undertaking which was not unfair or unconscionable and therefore not a penalty. The underwriters' loss was £500, for that was the sum they paid on the basis of an incapacity which, if the facts could have been foreseen, did not exist, and they made provision for that possibility concurrently with the payment.

DEVLIN, L.J., dissenting, said that he was satisfied that the underwriters' intention was to exact a penalty in order to restrict claims.

SLADE, J., delivered a judgment concurring with Sellers, L.J. Appeal allowed. Judgment for the plaintiffs for £500.

APPEARANCES: *Anthony Cripps*, Q.C., and *Edward Grayson* (*William Charles Crocker*); *David Hunter* (*Vizard, Oldham, Crowder & Cash*, for *Wild, Hewitson & Shaw*, Cambridge).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

### DUTY OF DRIVER AT CROSSROADS

**Williams and Another *v.* Fullerton and Another**

Ormerod, Devlin and Danckwerts, L.JJ.

13th March, 1961

Appeal from Havers, J.

The plaintiffs were passengers in a car driven by the deceased husband of the first defendant, when it collided with a car driven by the second defendant at the junction of Hemingford Road and Richmond Avenue, N.1, at about 10.50 p.m., on 10th September, 1958. Havers, J., found that both defendants were negligent and assessed the responsibility

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(*Continued on p. xix*)

of the first and second defendants for the accident at 75 per cent. and 25 per cent. respectively. The second defendant appealed.

ORMEROD, L.J., said that the second defendant was proceeding on the major road at a reasonable speed, and when he came to the crossing he looked right and left but saw nothing. He did not, as indicated by the Highway Code, look right again. The deceased man was driving on the minor road, controlled by a "Slow Major Road Ahead" sign, and there was no doubt that he was negligent in crossing the major road at between 30 and 60 m.p.h., and in not paying any attention to the sign. The submission for the appellant was that there was no duty on one approaching a crossing to look out for vehicles in side roads travelling at an excessive speed, even though excessive speed was the commonest form of negligence. The judge had found that the second defendant was not keeping as good a look out as he should have done, and that, had he kept a proper look out, the accident might have been avoided. It was impossible to disturb that finding, and the conclusion that the second defendant was also negligent.

DEVLIN and DANCKWERTS, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *Michael Lee* (*Stevensons*); *Patrick Bennett* (*Hewitt, Woollacott & Chown*); *Michael Eastham* (*Kingsley, Napley & Co.*).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law]

## JUDGMENT CREDITOR: DISCRETION OF COURT TO MAKE GARNISHEE ORDER: INTERESTS OF OTHER CREDITORS

### * Hudson's Concrete Products, Ltd. *v.* D. B. Evans (Bilston), Ltd., and Another

Willmer and Donovan, L.JJ. 14th March, 1961

Interlocutory appeal.

On 14th December, 1960, judgment creditors obtained judgment for £501 18s. 7d. and costs against the judgment debtors. The writ was issued on 9th November, 1960, for goods supplied in October. The judgment debtors had got into financial difficulties, a meeting of creditors was held in November, 1960, and a circular sent out in that month met with a favourable response from creditors. The judgment creditors obtained a garnishee order nisi on 20th December, 1960, attaching all debts owing or accruing from the garnishees, a bank, to the judgment debtors to answer the judgment. On 16th January, 1961, the judgment debtors took out an originating summons under s. 206 of the Companies Act, 1948, for the sanction by the court of a proposed scheme of arrangement and on the same day a petition for the winding up of the company was filed by a creditor for £117. On the following day, 17th January, 1961, the garnishee order was made absolute by the Cardiff District Registrar. The judgment debtors appealed.

WILLMER, L.J., said that the garnishee order would give the judgment creditors precedence over other creditors. The events of 16th January, 1961, were put before the district registrar, though they were too late to be recorded in an affidavit. The making of a garnishee order was a matter for the discretion of the court: see R.S.C., Ord. 45, r. 1. In the exercise of that discretion the district registrar had to pay regard to the provisions of the Companies Act, 1948, including ss. 226, 228, 229 and 325. On the other side there was the prima facie right of a judgment creditor to pursue his remedy. The principle in this class of case was dealt with in *Bowkett* v. *Fuller's United Electric Works, Ltd.* [1923] 1 K.B. 160. It would be wrong to allow these creditors, even though they were judgment creditors, to gain an advantage over other creditors. The garnishee order might have the effect of wrecking the scheme of arrangement because it gave the judgment creditors priority over other creditors. The district registrar did not exercise his discretion judicially and his lordship would allow the appeal.

DONOVAN, L.J., said that it was quite clear from the evidence that the judgment creditors feared for their debt. They feared that they might only get a dividend on their debt and not the whole debt. The move was a bit hard on other and larger creditors who were ready to stay their hands for a little while in the general interests of all. The making of a garnishee order was a discretionary matter and it would be a wrong exercise of that discretion when the effect would be to prefer one creditor to the general body of creditors. His lordship would allow the appeal. Appeal allowed with costs in the Court of Appeal and before the district registrar.

APPEARANCES: *Philip Goodenday* (*Nicholson, Graham & Jones*, for *Price, Atkins & Price*, Birmingham); *John Hall* (*Cunliffe & Mossman*, for *Yorath, Tudor & Taylor*, Cardiff).

[Reported by A. H. BRAY, Esq., Barrister-at-Law]

# Chancery Division

## RECTIFICATION OF SETTLEMENTS TO AVOID ESTATE DUTY NOT ALLOWED

### *Duncan and Others *v.* Royal Trust Co., Ltd., and Others

Plowman, J. 15th March, 1961

Action.

On 6th May, 1940, a settlor executed two settlements in precisely the same form, one for the benefit of her elder daughter, Mrs. *Y*, and her family and one for the benefit of her younger daughter, Mrs. *H*, and her family. In the introductions to the settlements the settlor was said to be thereinafter referred to as "the settlor." Clause 2 provided that the trustees should during the life of the settlor apply the income of the fund for the benefit of the daughter, "her husband, her issue, her sister and her mother." Clause 3 provided that if the daughter had no issue who attained a vested interest then the income was, during the lifetime of the settlor, to be applied for the benefit of the other daughter and "her husband, her issue and her mother." Clause 5 gave the daughter the power to revoke in certain circumstances the discretionary trusts in favour of "herself, her husband, her sister and her mother." The settlements were drafted by the settlor's solicitor, who was then aged eighty, and he died before the proceedings commenced. No specific instructions were contained in the preliminary correspondence to the solicitor about saving estate duty on the settled funds in the event of the settlor's death, but it was agreed that that was one of the objects of the scheme. In an action by the settlor, her daughters and their husbands to rectify the settlements by striking out the words "and her mother" in the places in which they appeared, it was the plaintiffs' case that the settlor did not intend that she should be in any way interested in the settled property. The settlor gave evidence on commission but owing to her advanced age and state of health the court did not attach weight to it.

PLOWMAN, J., said that in such cases the burden of proof on the plaintiffs was very heavy, and in the case of a voluntary settlement it was even heavier. It was not a case of establishing a case on the balance of probabilities but of "strong, irrefragable evidence" as Lord Thurloe said as long ago as 1784. The plaintiffs had to prove that in drafting these settlements the solicitor had gone beyond the settlor's instructions and her intention in inserting "and her mother." The evidence fell far short of proving that these words were inserted against her instructions and her intention. The drafts had been submitted to the settlor containing these words and she had approved them and executed them. A mistake on the settlor's part as to the effect of the settlements

would not avail her if she had meant to execute them with the offending words in them. The action failed.

APPEARANCES: *Peter Foster*, Q.C., and *Michael Fox* (*Bischoff & Co.*); *H. E. Francis*, Q.C., and *E. I. Goulding* (*Farrer & Co.*).

[Reported by Miss PHILIPPA PRICE, Barrister-at-Law]

## EDUCATION: FAILURE TO COMPLY WITH SCHOOL ATTENDANCE ORDER: JURISDICTION OF CHANCERY DIVISION

### *In re* Baker (Infants)

Pennycuick, J. 15th March, 1961

Adjourned summons.

The mother of three children of school age was twice convicted and fined by justices for failure to comply with school attendance orders under s. 37 of the Education Act, 1944. Her appeal against the first conviction was dismissed by quarter sessions in 1958, and against the second by the Divisional Court in February, 1960, but she persisted in her refusal to comply with the orders. The local education authority took out a summons asking that the children be made wards of court and that the court should give directions as to their education. The argument was heard in chambers but the hearing was adjourned into open court for judgment.

PENNYCUICK, J., said that the mother was not causing her children to receive an efficient full-time education within the meaning of s. 35 of the Act of 1944. It was clear that the Act had by necessary implication restricted the inherent jurisdiction of the Sovereign to the extent that the court could not give any direction at variance with the Act. The Act, by placing outside the jurisdiction of the court the decision whether a child was to receive education in accordance with the order, had equally put it outside the jurisdiction of the court to enforce the order. He had derived much assistance from *In re M* [1961] 2 W.L.R. 350; p. 153, *ante*. The court could only act within its jurisdiction, which could not be stretched to meet the circumstances of this case, and to do so would be a dangerous precedent. He would direct that the children should cease to be wards of court and he would make no order as to their education.

APPEARANCES: *A. C. Sparrow* (*Sharpe, Pritchard & Co.*, for *F. P. Boyce*, Norwich); *Arthur Bagnall* (*Piesse & Sons*, for *Russell Steward, Stevens & Hipwell*, Norwich); *T. A. C. Burgess* (*Field, Roscoe & Co.*, for *Sadler, Lemmon & Gephin*, King's Lynn).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

## ESTATE DUTY: AGGREGATION: SETTLED PROPERTY: SMALL ESTATE

### Dunn and Another *v.* Inland Revenue Commissioners

Wilberforce, J. 16th March, 1961

Adjourned summons.

By his will a testator left two-thirds of his estate on trust for his son for life and after his death to his son's issue. The testator died in 1940. In 1956, the trustees of the will advanced a total of £2,626 0s. 2d. to the children of the tenant for life. The tenant for life died in December, 1956, and, at the date of his death, the trust fund was of a value of £101,924 6s. 6d. and his free estate, for the purposes of estate duty, was £6,292 18s. 4d. The trustees issued a summons to determine whether the sums advanced, which were, by virtue of s. 43 of the Finance Act, 1940, deemed to be included in the property passing on the death of the tenant for life, should be aggregated with the free estate of the tenant for life or with the trust fund for the purposes of determining the estate duty for which the trustees were liable on the death of the tenant for life.

WILBERFORCE, J., said that the sections to be considered were s. 43 of the Finance Act, 1940, and s. 33 of the Finance Act, 1954, which provided for the exemption from aggregation with settled property of property other than settled property of a value of less than £10,000. Thinking first of the natural meaning of words, it would not be proper to describe the sums in question as settled property. They were property which had been taken out of the settlement and they were within the absolute disposition of the persons in whose hands they were. If the Crown was to succeed in establishing that they were to be treated as settled property it must do so on the construction of ss. 43 and 33. It did not seem to him that s. 43 required him to treat the sums in question as notional settled property for the purposes of estate duty. Reading s. 33 in its natural meaning, in particular paying attention to the words "property comprised in a settlement" in the definition of "settled property" in s. 22 of the Finance Act, 1894, he was called upon to inquire what was the status of the property at the date when it was necessary to ascertain whether estate duty was payable, that was at the date of the relevant death. If it was not settled property at that date he was not obliged to attribute to it the character of settled property simply because it had at some time been settled. Declaration that the sums advanced formed part of the other property of the tenant for life for the purposes of s. 33.

APPEARANCES: *H. H. Monroe*, Q.C., and *R. Buchanan-Dunlop* (*Johnson Weatherall & Sturt*, for *Acton, Simpson & Hanson*, Nottingham); *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

[Reported by Miss V. A. MOXON, Barrister-at-Law]

## LIMITATION: CURRENT ACCOUNT: PAYMENTS GENERALLY ON ACCOUNT

### *In re* Footman Bower & Co., Ltd.

Buckley, J. 16th March, 1961

Adjourned summons.

The applicant supplied goods to a company and the account between them was kept as a current account. The company from time to time made payments in multiples of £50 on account generally. On 11th April, 1953, a receiver and manager of the company's business was appointed. On 23rd March, 1959, an order was made for the compulsory liquidation of the company. The amount owing by the company to the applicant on 23rd March, 1953, six years before the winding-up order, was £815 7s. 1d. and the amount of the indebtedness incurred by the company to the applicant between 23rd March, 1953, and the appointment of the receiver was £80 2s. 9d. During that period, six payments of £50 were made, the last being made on 10th July, 1953. The applicant lodged a proof of debt in the liquidation for a sum of £595 9s. 10d., being the sum owing by the company to the applicant immediately before the appointment of the receiver. The liquidator rejected the proof in respect of £515 7s. 1d. on the ground that the debt was statute-barred, and admitted the proof for the balance. The applicant appealed against the liquidator's partial rejection of the proof.

BUCKLEY, J., said that s. 23 (4) of the Limitation Act, 1939, provided that any payment in respect of a debt would make time start running afresh in respect of that debt. One must look at the intention of the debtor to see whether the payment was made in respect of the particular debt. A payment could, for the purpose of s. 23 (4), only acquire the characteristic of being made "in respect of" the debt by the act of the debtor. The rule in *Clayton's* case (1816), 1 Mer. 572, applied to any current account and was applicable to the present case so that each new credit was treated as discharging the earliest outstanding debit. This did not affect the true nature of the debt. When there was an account running between the parties, by making a payment generally on account, the debtor made it on account of the whole of his indebtedness.

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Such a payment constituted a payment "in respect of" the balance of the account for the purposes of s. 23 (4). Consequently, on the occasion of each of the payments time started to run afresh in respect of the balance then left outstanding and the liquidator was wrong in rejecting any part of the applicant's proof. Direction that the proof be admitted in full.

APPEARANCES: *Muir Hunter* (*Matthew Trackman, Lifton & Cunnington*); *Lloyd Stott* (*M. L. Spector*).

[Reported by Miss V. A. MOXON, Barrister-at-Law]

## Probate, Divorce and Admiralty Division

### FOREIGN DIVORCE DECREE: PROCEEDINGS FRAUDULENTLY CONCEALED FROM SPOUSE

**Ormerod *v.* Pittman (formerly Ormerod) and Pittman**

Marshall, J. 13th March, 1961

Petition for a declaration of nullity and dissolution of marriage.

The spouses were married in September, 1948, in England. The husband was a domiciled Englishman. By a decree entered on 19th January, 1953, the Superior Court of Thomas County, in the State of Georgia, U.S.A., granted to the wife, who was then resident in Georgia, a decree of "total divorce, upon legal principles." On 18th December, 1955, the wife went through a ceremony of marriage with the co-respondent in Georgia, and thereafter cohabited with him in Maryland. By a petition dated 23rd April, 1960, the husband sought a declaration that the decree made by the court in Georgia was a nullity, on the ground that the wife fraudulently prevented notice of the proceedings being served upon him, and, in the exercise of the court's discretion in respect of his own adultery, dissolution of the marriage on the ground of the wife's adultery with the co-respondent. The suit was undefended. Expert evidence established (1) that in Georgia, as an alternative to personal service of divorce proceedings, service may, with the leave of the court, be effected upon a non-resident respondent by publication of notice of the proceedings in a specified newspaper and the sending of a copy of that newspaper to the respondent; (2) that although the decree granted to the wife on 19th January, 1953, would be accepted by the courts of the State of Georgia as prima facie evidence of a valid divorce, if the wife fraudulently gave a wrong address to the court for the purposes of service by publication upon the husband, with the result that such publication was not effected, the decree would be voidable. The clerk of the Superior Court of Thomas County, Georgia, certified that on 6th September, 1952, he sent a copy of a newspaper containing notice of the proceedings to the husband, addressed to "Crosby Blundell Sands, Lancashire," but that it was subsequently returned, unclaimed.

MARSHALL, J., said that it was clear on the evidence that in the proceedings taken by the wife in Georgia, when the question of service of those proceedings upon the husband arose, she knew very well a number of methods by which he could be communicated with. She must have given, however, probably on oath, an address with which the husband had no connection, in order to deceive the court in Georgia. The result was that the husband had no notice of the proceedings at the material time. The decree granted to her would accordingly be treated as a nullity in English law, following *MacAlpine* v. *MacAlpine* [1958] P. 35. The husband would therefore be granted a declaration to that effect and, in the exercise of the court's discretion, a decree nisi of divorce, on the ground of the wife's adultery with the co-respondent. Order accordingly.

APPEARANCES: *Joseph Jackson* (*Maltz, Mitchell & Co.*, for *Whittingham, Glass & Morrison*, Manchester).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

### DIVORCE: SETTLEMENT OF GUILTY WIFE'S PROPERTY: WIFE DOMICILED AND RESIDENT ABROAD: JURISDICTION

**Hunter *v.* Hunter and Waddington**

Scarman, J. 15th March, 1961

A husband who had obtained a decree absolute of divorce against his wife on the ground of her adultery applied under s. 24 of the Matrimonial Causes Act, 1950, for an order settling the wife's property for the benefit of the two children of the marriage. The wife having re-married, and being domiciled and resident in Kenya, entered an appearance under protest, contending that the court had no jurisdiction to make the order applied for.

SCARMAN, J., said that it was submitted that lack of English domicile on the part of the wife necessarily entailed lack of jurisdiction. That, however, was altogether too sweeping a proposition. The true principle was that, where a wife was neither domiciled nor resident in England, the court might nevertheless exercise its jurisdiction to order a settlement if the property to be settled was within the jurisdiction, so that it might be the subject of an effectual order. Here, the property of the wife which was suggested for settlement was within the jurisdiction of the court. Moreover, if the court ordered a settlement of that property, and the wife refused to execute such settlement, it could, without resort to attachment and without infringement of the authority of the courts of Kenya, give effect to its order by exercising its powers under s. 47 of the Supreme Court of Judicature (Consolidation) Act, 1925. That section enabled the court, in a case where a person neglected or refused to execute a settlement ordered, to nominate another person to execute it. The wife would be ordered to execute a settlement of certain specified parts of her property in England upon trusts for the benefit of the children. Order accordingly.

APPEARANCES: *Douglas Lowe* (*Ralph Bond & Rutherford*); *R. L. Bayne-Powell* (*Gibson & Weldon*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

## Court of Criminal Appeal

### OVERLAPPING SENTENCES OF PREVENTIVE DETENTION: VALIDITY

**R. *v.* Lake**

Lord Parker, C.J., Winn and Widgery, JJ.

6th February, 1961

Appeal against sentence.

The defendant, while serving a sentence of eight years' preventive detention, absconded from prison and broke into a house, where she committed larceny. For these offences the defendant was sentenced to ten years' preventive detention consecutive to the previous sentence. She appealed against this sentence.

LORD PARKER, C.J., said that the question was whether it was proper in a case of this sort to make the sentence of preventive detention consecutive to the previous period of preventive detention. The court could see nothing wrong in law in doing so, but care should be taken to see that the appellant was not, in effect, punished twice, first, by a sentence of preventive detention, and, secondly, by a forfeiture of the period which he or she would have spent on licence. The better practice was to make the sentence of preventive detention date from conviction, in which case it would absorb, as it were, the unexpired portion of any previous sentence of preventive detention. The proper course in the present case was to make the sentence of ten years' preventive detention date from conviction. Appeal allowed.

APPEARANCES: *Peter Perrins* (*Registrar, Court of Criminal Appeal*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

## Restrictive Practices Court

### INJUNCTION: POWERS OF COURT: SERVICE BY RECORDED DELIVERY

***In re* Wholesale Confectioners' Alliance Agreement (No. 2)**

Russell, J., Sir Stanford Cooper and Mr. W. L. Heywood

8th March, 1961

Application.

The registrar applied for a formal order declaring the restrictions in the Wholesale Confectioner's Alliance Agreement set out in the judgment of the court given on 9th December, 1960 (104 SOL. J. 1094), contrary to the public interest, and for orders under s. 23 (3) and (4) of the Restrictive Trade Practices Act, 1956. The draft order put forward by the registrar (*a*) restrained "the Alliance, the members, the local associations and the represented parties" from giving effect to or enforcing the agreement in respect of any of those restrictions and from making any other agreement to the like effect in respect of the restrictions; and (*b*) restrained the Alliance, the members and the local association from making any recommendation as to the action to be taken by the represented parties "in respect of the prices at which goods are to be acquired or the prices at which goods are to be supplied by the represented parties." The respondents contended that order (*a*) should be limited to the actual wholesalers themselves on the ground that the Alliance was not a party to the agreement but only the ultimate represented parties, and also on the ground that it could not be described as carrying on business within s. 6 (1) of the Act, and objected to order (*b*) on the ground that any order under s. 20 (4) must be limited to restraining the making of recommendations that persons should comply with the actual restrictions condemned by the court and those restrictions only.

RUSSELL, J., said that, as to order (*a*), the point was academic because the real parties to the agreement could be dealt with under s. 20 (3) and the association under subs. (4); nor was it necessary to restrain an association from enforcing restrictions because obviously, if it was not allowed to make recommendations, it could not take steps to enforce them. But the court was inclined to think that the represented parties alone should be referred to, and also that the Alliance did not carry on business in the United Kingdom in the sense in which that phrase was used in the context of the Act. As to order (*b*), s. 20 (4) applied to any restriction accepted under a term implied by virtue of s. 6 (7), and, reading back to s. 6 (7), the term implied was one by which each member agreed to comply with the recommendations and "any subsequent recommendations." The powers of the court, therefore, were not limited to the actual and precise restrictions condemned in the particular judgment, but extended more widely. How widely it was not necessary to consider since it had been agreed by the Alliance that if their argument was not fully accepted the proper order should restrain the making of any recommendation "as in the said restrictions or to the like effect." The registrar was prepared to accept that such a limitation was proper and appropriate, and the order of the court would be in the registrar's form with that addition. The court also considered that, as the order was an injunction, it was not desirable that the matter should be dealt with by newspaper advertisement, and directed service by posting copies of the order by recorded delivery service to each wholesaler; if inquiries showed that that service would be less useful for the registrar's purposes than registered post, an informal application could be made. Order accordingly.

APPEARANCES: *Neville Faulks*, Q.C., and *Arthur Bagnall* (*Treasury Solicitor*); *Guy Aldous*, Q.C., and *Bryan Clauson* (*Stafford, Clark & Co.*).

[Reported by Miss J. F. LAMB Barrister-at-Law]

### RESTRICTIVE PRACTICE: CEMENT MAKERS' AGREEMENT: WHETHER JUSTIFIABLE

***In re* Cement Makers' Federation's Agreement**

Diplock, J., Mr. W. L. Heywood, Mr. W. G. Campbell and Sir Gilbert Flemming

16th March, 1961

Reference.

The agreement between the members of the Cement Makers' Federation provided for a common price scheme and common marketing arrangements. The fixed price was made up of a "base price," being the price paid for deliveries ex works, and a distance price, which increased by specified amounts as deliveries were made farther away from the works, but the distance price increases became progressively less the farther deliveries were made from the works.

DIPLOCK, J., reading the judgment of the court, said that the price structure was such that the makers were induced to sell to customers nearest to their works, and the scheme thereby avoided the uneconomical use of transport. Cement being a heavy material, the cost of transport formed a high proportion of its total cost. The industry had operated efficiently, and had adopted a policy of modest profits and reasonable prices. It was an expanding industry, and cement was and would probably remain a sellers' market. In such conditions the price level would be that at which there was sufficient return to attract capital for investment in new works. Under competition the makers would require and obtain a greater return on their capital than the return they were at present obtaining, because of the greater risk. The difference was at least 5 per cent. on the capital employed, which meant an increase in the overall price of cement of at least 16s. 6d. per ton. Therefore in a free market the overall prices of cement would rise substantially. Accordingly the scheme had resulted, because of the security it gave to the makers, in substantially lower prices to the public and was in the public interest. There were however two restrictions in the scheme which could not be justified—they were the deferred rebates given to large users and the requirement that members could not enter into contracts of more than twelve months' duration for the supply of cement except for a specified job—and those two restrictions would be declared contrary to the public interest. Declarations accordingly.

APPEARANCES: *H. A. P. Fisher*, Q.C., *R. J. Parker* and *R. C. Southwell* (*Sydney Morse & Co.*); *Sir Edward Milner Holland*, Q.C., and *Arthur Bagnall* (*Treasury Solicitor*).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law]

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### Societies

The eighty-fifth annual general meeting of the BRADFORD INCORPORATED LAW SOCIETY was held at the Bradford Club, Bank Street, Bradford, on 8th March, when the following officers were elected: president: Mr. J. K. Read; vice-presidents (senior): Mr. C. P. Pickles, LL.B.; (junior): Mr. R. W. T. Vint, M.A. (Oxon); joint hon. secretaries: Mr. C. P. Pickles, LL.B., and Mr. R. W. T. Vint, M.A. (Oxon); council members (for one year): Mr. T. A. Last, LL.B. (the retiring president); (for three years): Mr. H. B. Connell, Mr. R. W. Firth, M.A., LL.B. (Cantab.), Mr. G. H. Hall and Mr. B. Leather, LL.B.; hon. auditors: Mr. G. V. Mackrell and Mr. W. E. B. Holroyd, LL.B.

The retiring president, Mr. Last, appears to have created a local precedent in becoming engaged to be married during his year of office.

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(*continued on p. xxiii*)

# IN WESTMINSTER AND WHITEHALL

## HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Clerical Medical and General Life Assurance Bill [H.C.] [16th March.

**Land Compensation Bill [H.L.]** [15th March.

To consolidate the Acquisition of Land (Assessment of Compensation) Act, 1919, and certain other enactments relating to the assessment of compensation in respect of compulsory acquisitions of interests in land; to the withdrawal of notices to treat; and to the payment of additional compensation and allowances in connection with such acquisitions or with certain sales by agreement of interests in land; with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

Shell Brazil Bill [H.C.] [16th March.

Winchester Cathedral Close Bill [H.C.] [16th March.

Read Second Time:—

City of London (Various Powers) Bill [H.L.] [16th March.

**Right of Privacy Bill [H.L.]** [13th March.

Read Third Time:—

Allhallows Staining Churchyard Bill [H.L.] [14th March.

**Flood Prevention (Scotland) Bill [H.C.]** [16th March.

Rio Tinto Rhodesian Mining Limited Bill [H.L.] [14th March.

In Committee:—

**Post Office Bill [H.C.]** [16th March.

## HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

**Sierra Leone Independence Bill [H.C.]** [17th March.

To make provision for, and in connection with, the attainment by Sierra Leone of fully responsible status within the Commonwealth.

**Sir Roger Casement Bill [H.C.]** [14th March.

To provide for the transfer to Ireland of the remains of Sir Roger Casement.

Read Second Time:—

**Crofters (Scotland) Bill [H.C.]** [15th March.

Read Third Time:—

**National Health Service Contributions Bill [H.C.]** [16th March.

B. QUESTIONS

LOCAL LAND CHARGES

The ATTORNEY-GENERAL said that the recommendations of the Stainton Committee on Local Land Charges were still being considered. Legislation would be required to implement most of the recommendations, and there was no hope of that during the present Session. [14th March.

## STATUTORY INSTRUMENTS

**Air Operators' Certificates Regulations, 1961.** (S.I. 1961 No. 408.) 5d.

**Civil Aviation** (Transitional Licences) (No. 3) Order, 1961. (S.I. 1961 No. 410.) 5d.

**County of Berks** (Electoral Divisions) Order, 1961. (S.I. 1961 No. 404.) 6d.

**Exeter-Leeds Trunk Road** (Lydiate Ash, near Bromsgrove, Diversion) Order, 1961. (S.I. 1961 No. 395.) 5d.

**Ipswich – Newmarket – Cambridge – St. Neots – Bedford – Northampton–Weedon Trunk Road** (Section at Upper Heyford in the County of Northampton) Order, 1961. (S.I. 1961 No. 379.) 5d.

**London–Edinburgh–Thurso Trunk Road** (Humber Head Bridge to Hampole Balk) Order, 1961. (S.I. 1961 No. 370.) 4d.

**London Traffic** (Prohibition of Cycling on Footpaths) (Dartford) Regulations, 1961. (S.I. 1961 No. 360.) 5d.

**Manchester Water** Order, 1961. (S.I. 1961 No. 406.) 5d.

Manchester Water (No. 2) Order, 1961. (S.I. 1961 No. 421.) 5d.

**Merchant Shipping** (Crew Accommodation) (Amendment) Regulations, 1961. (S.I. 1961 No. 393.) 4d.

**Metropolitan Police Staffs Superannuation** Order, 1961. (S.I. 1961 No. 438.) 4d.

**National Gallery** (Lending outside the United Kingdom) (No. 1) Order, 1961. (S.I. 1961 No. 409.) 4d.

**National Insurance** (Classification) Amendment Regulations, 1961. (S.I. 1961 No. 420.) 5d.

National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Amendment Regulations, 1961. (S.I. 1961 No. 383.) 5d.

National Insurance (Modification of the Air Force Pension Scheme) Regulations, 1961. (S.I. 1961 No. 391.) 5d.

National Insurance (Modification of Local Government Superannuation Schemes) No. 2 Regulations, 1961. (S.I. 1961 No. 405.) 11d.

National Insurance (Modification of the Metropolitan Police Staffs Superannuation Provisions) Regulations, 1961. (S.I. 1961 No. 439.) 5d.

National Insurance (Modification of the Royal Naval Pension Scheme) Regulations, 1961. (S.I. 1961 No. 294.) 5d.

**Perth County Council** (Camserney Burn) Water Order, 1961. (S.I. 1961 No. 418 (S. 21).) 5d.

*Draft* **Police Pensions** (Amendment) Regulations, 1961. 6d.

*Draft* Police Pensions (Scotland) (Amendment) Regulations, 1961. 6d.

**Royal Irish Constabulary** (Widows' Pensions) Regulations, 1961. (S.I. 1961 No. 402.) 4d.

**Shipbuilding** (Air Receivers) Order, 1961. (S.I. 1961 No. 430.) 5d.

Shipbuilding (Lifting Appliances, etc., Forms) Order, 1961. (S.I. 1961 No. 431.) 6d.

Shipbuilding (Reports on Lifting Appliances) Order, 1961. (S.I. 1961 No. 433.) 5d.

**Stafford Water** Order, 1961. (S.I. 1961 No. 407.) 5d.

**Stopping up of Highways Orders, 1961:—**

City and County of Bristol (No. 1). (S.I. 1961 No. 413.) 5d.
City and County of Bristol (No. 3). (S.I. 1961 No. 394.) 5d.
County of Buckingham (No. 2). (S.I. 1961 No. 398.) 5d.
County of Derby (No. 3). (S.I. 1961 No. 384.) 5d.
County of Essex (No. 3). (S.I. 1961 No. 397.) 5d.
County of Essex (No. 5). (S.I. 1961 No. 414.) 5d.
County of Gloucester (No. 2). (S.I. 1961 No. 369.) 5d.
County of Kent (No. 1). (S.I. 1961 No. 415.) 5d.
County of Kent (No. 2). (S.I. 1961 No. 378.) 5d.
County of Lancaster (No. 10). (S.I. 1961 No. 385.) 5d.
City and County Borough of Leeds (No. 3). (S.I. 1961 No. 386.) 5d.
London (No. 7). (S.I. 1961 No. 416.) 5d.
London (No. 10). (S.I. 1961 No. 396.) 4d.
County of Somerset (No. 2). (S.I. 1961 No. 417.) 5d.
County of York, West Riding (No. 8). (S.I. 1961 No. 387.) 5d.

## SELECTED APPOINTED DAYS

**March**

13th — Wages Regulation (Cotton Waste Reclamation) Order, 1961. (S.I. 1961 No. 344.)

15th — Road Traffic Act, 1956, s. 2, as respects vehicles first registered on or after 1st January, 1937, and before 1st January, 1946.
Wages Regulation (Paper Bag) Order, 1961. (S.I. 1961 No. 345.)

21st — Road Traffic and Roads Improvement Act, 1960, ss. 11, 13 (1) to (7), (9), (10).

30th — Civil Aviation (Licensing) Act, 1960, ss. 1 (2), 6, 9 (except in so far as it repeals the Civil Aviation Act, 1949, s. 12, and the entries referred to in s. 9 (*c*)).

# POINTS IN PRACTICE

*Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all*

**Title**—Settled Land—No Vesting Assent

*Q.* We act for a proposed mortgagee. The abstract of the mortgagor's title shows the will of a testator appointing two executors, his death in July, 1936, and probate in favour of the two executors in December, 1936. There follows in December, 1938, an assent by the two executors in favour of the mortgagor of the property to be mortgaged "subject to the proviso contained in the said will of the testator as to the payment of the sum of £5 per annum by equal half-yearly payments to Mrs. Blank during her lifetime." The abstract shows that Mrs. Blank died in 1949. We made the will, if it contains the proviso mentioned in the abstract of the assent, a trust instrument under s. 6 of the Settled Land Act, 1925, and we say that s. 8 of the same Act made a vesting assent stating the names of the trustees of the settlement, etc., obligatory. Notwithstanding the death of Mrs. Blank in 1949, we do not see that the fee simple is vested in the mortgagor, for we think the assent must have been in 1938 void, and cannot take any effect simply because eleven years later on the death of Mrs. Blank the land is no longer settled. We looked for help for the mortgagor in s. 1 of the Law of Property (Amendment) Act, 1926, but we could not see that it helped in fact, and think that now the two executors or their survivor must assent anew. Is this so?

*A.* We agree with your reasoning. In our view the assent was not valid, as it did not contain the particulars required by the Settled Land Act, 1925, ss. 5 (1) and 8 (1). A purchaser (or mortgagee) is not protected by the assent as it shows that a vesting assent under the Settled Land Act should have been executed (*Re Duce and Boots* [1937] Ch. 642). Consequently we agree that a further assent is now necessary by the present personal representatives.

**Title subject to Incumbrance**

*Q.* A client of ours signed a contract prepared by an estate agent for the purchase of a freehold house. The house was described in the contract by referring to its number and the name of the road. No mention was made in the contract of any exceptions and reservations. Upon a perusal of the title it appears that the freehold interest is subject to certain exceptions and reservations in respect of a right of way. In these circumstances can it be argued that the property has not been sufficiently described in the memorandum, or alternatively that the purchaser can refuse to accept a conveyance subject to the exceptions and reservations?

*A.* In our opinion, on the facts stated, the purchaser may refuse to accept a conveyance subject to the right of way (which is assumed to amount to a legal easement). The vendor is apparently unable to deduce a title except subject to an incumbrance and the purchaser cannot be compelled to accept this title (*Heywood* v. *Mallalieu* (1883), 25 Ch. D. 357).

**Landlord and Tenant**—Use of Shop Windows—Whether Tenancy

*Q. A* proposes to make an arrangement with *B* to enable *B* to use windows of shop premises for purposes of window display for a travel agency on a monthly basis. The shop premises as such would not be demised, only access to the premises and other facilities for window display purposes. It seems on these facts that *B* could not possibly ground a claim for a new lease under the Landlord and Tenant Act, 1954, even although the window display went on for more than six months.

*A.* In our opinion, *Wilson* v. *Teverner* [1901] 1 Ch. 578, *King* v. *Allen & Sons Billposting, Ltd.* [1916] 2 A.C. 54, and *Walton Harvey, Ltd.* v. *Walker & Homfrays, Ltd.* [1931] 1 Ch. 274, would provide ample authority for the proposition that the arrangement did not create a tenancy, with the consequence that Pt. II of the Landlord and Tenant Act, 1954, did not apply; though, if there were a tenancy, the Part would apply unless it were for a fixed term not exceeding three months.

**Stamp Duty**—Refund on Cheques Tendered with Application Forms for New Issue of Shares

*Q.* One of our clients occasionally engages in a "stagging" application for shares in a new issue. During this operation he normally makes fifty applications, of which he is fortunate to have more than a small number of applications successful in the ballot, and the unsuccessful applications are returned to him together with his uncashed cheques. At the request of our client we submitted a number of these cheques to the Stamp Office in order to reclaim the small amount of stamp duty paid on the cheques, it being our opinion that these constituted tenders which had not been accepted. The Stamp Office have refused to refund the duty on the grounds that our client might have benefited from the use of these cheques, and that the stamp duty should not be refunded where he had the opportunity of benefiting through the ballot. Kindly advise us as to whether or not you feel the view of the Stamp Office to be correct, as we find that the office is reluctant to put its decision in writing and has so far merely given an oral indication of its attitude.

*A.* So far as we are aware the only provision entitling the taxpayer to recover stamp duty which has been impressed upon an instrument is the Stamp Duties Management Act, 1891, s. 9, and if the duty is to be recovered we think that your client must bring himself within one of the seven cases therein mentioned. We do not think that the facts come within any of them. Cases (4) and (5) dealing with bills of exchange and promissory notes require that the instrument has not been made use of in any manner whatever, and we think that your client has made use of the cheques because by enclosing the cheque with the application form he has induced those responsible for the issue to consider his application, which they would not have done had the cheque not been included. We see no reason why you should not press the Stamp Office to give its reasons in writing, but our own view is as we have stated it: your client cannot bring himself within the wording of the appropriate statutory provision.

**Income Tax**—Divorced Wife's Income

*Q.* I act for a husband who recently obtained a decree nisi of divorce against his wife on the grounds of her desertion. Prior to the matrimonial break-up, things had been unsatisfactory between the parties for quite a while. The wife had a fair amount of unearned income and the husband was assessed for income tax thereon. About two years ago the husband received a demand for income tax and he replied to the letter repudiating responsibility. He was, of course, responsible, as it was income of the wife in respect of which he had been assessed, even though he had not received benefit from the income. He heard nothing from the collector of taxes, and he assumed that the matter was closed so far as he was concerned. However, recently the collector of taxes has been pressing for payment. It is appreciated that my client's request for a separate assessment could not be entertained at this stage as the statutory time-limit has presumably expired and, on the face of things, it would appear that he has no defence to the claim. However, I am wondering whether he has a claim against his wife for the tax which he is being called upon to pay, inasmuch as it is her income, out of which he has received no benefit whatsoever.

*A.* There is no statutory provision giving the husband a right over against the wife in the circumstances you mention, so that any claim against her would have to be based upon the proposition that he had paid money away to her use. But if he failed to apply for a separate assessment the liability is his and not hers, and we do not think that he can be said to have paid money to her use when he has paid it in discharge of the liability which is cast by statute on him. It is to be observed, however, that the Income Tax Act, 1952, s. 359, provides that where an assessment has been made in respect of the wife's income and the tax thereon has remained unpaid for twenty-eight days the Commissioners of Inland Revenue, or as the case may be, the Special Commissioners, are given power to collect the tax from the wife. There is no machinery whereby the Commissioners can be compelled to take that course but there is no reason why they should not be invited to.

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## PUBLIC NOTICES

### SURREY COUNTY COUNCIL

ASSISTANT SOLICITOR

Applications for this post, Grade A.P.T. V. (£1,310–£1,525 inclusive of London weighting), stating age, qualifications, experience, with names and addresses of two referees, to undersigned by 1st April, 1961. Previous local government experience preferable. March finalists awaiting admission would be considered.

W. W. RUFF,
Clerk of the Council.

County Hall,
Kingston-upon-Thames.

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W. F. NEWSTEAD,
Secretary to the Board.

10 Augustus Road,
Edgbaston,
Birmingham, 15.

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### NEW SCOTLAND YARD

PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. Salary on appointment, £994 (at age 24) to £1,179 (at age 30) (including London weighting). After one year's satisfactory service the salary will be advanced to a point between £1,145 (at age 25) and £1,350 (age 30); the scale then rises by annual increments to a maximum of £1,922. These amounts will shortly be increased by an addition in the element of London weighting. Non-contributory pension. Good prospects of promotion to higher posts. No previous experience required of criminal prosecutions. Candidates who have passed their final examination but have not yet been admitted will be considered. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

### CENTRAL COUNCIL OF PROBATION COMMITTEES IN ENGLAND AND WALES

APPOINTMENT OF SECRETARY

Applications are invited from Barristers or Solicitors or other suitably qualified persons for the above appointment on a part-time basis, for which the Central Council is prepared to offer a salary of £1,000 per annum. Preference will be given to applicants having available office accommodation and clerical assistance. Financial arrangements would be made with the successful applicant or his employing authority in respect of these services and other usual office expenses. To assist the Secretary, it is envisaged that a full-time clerical assistant, with Committee experience, will also be appointed.

Forms of application, together with particulars of duties involved, may be obtained from the undersigned, Ref.: C.C.P.C., to be returned not later than Saturday, 1st April, 1961.

K. GOODACRE,
Acting Secretary
(Clerk of the Peace, Middlesex).

Guildhall,
Westminster, S.W.1.
6th March, 1961.

### COUNTY BOROUGH OF BIRKENHEAD

APPOINTMENT OF LAW CLERK

Salary—Grade A.P.T. II (£815–£960 p.a.). Established post—superannuable.

Applicants should have had experience in Conveyancing and Local Government experience would be an advantage, but is not essential. Applications, stating age, qualifications and details of previous experience together with the names of two referees, and endorsed "Law Clerk" must be received by me not later than the 10th April, 1961. Relationship to members or senior officers of the Council must be disclosed.

DONALD P. HEATH,
Town Clerk.

Town Hall,
Birkenhead.
15th March, 1961.

### HAMPSHIRE COUNTY COUNCIL

Applications are invited for the appointment on the staff of the Clerk of the County Council of an ASSISTANT SOLICITOR, with previous experience in Local Government, preferably with a County or County Borough Council, at a salary within Scale F (£2,015—£2,345).

For a young solicitor with ability and initiative, bent on becoming a Clerk to a large local authority, this appointment presents an opportunity of gaining valuable administrative and legal experience in a County presenting a wide range of local government activity. The commencing salary will be fixed according to qualifications and experience. Separation allowance and assistance with removal expenses will be paid in approved cases.

Applications, giving full particulars of age, education, qualifications and experience, and the names of two referees, should reach the Clerk of the County Council, The Castle, Winchester, by 17th April.

### CITY OF LEEDS

TOWN CLERK'S OFFICE
UNADMITTED LEGAL ASSISTANT

Applicants are invited for the above permanent appointment. Salary within range £815 to £960 according to experience. Previous local government experience is not absolutely necessary. The successful applicant will be required to perform duties for which a sound practical experience in conveyancing is essential.

Applicants, stating age, education, experience, previous appointments held, together with the names of two referees, to the Town Clerk, Civic Hall, Leeds, 1, not later than 8th April, 1961.

### HAMPSTEAD BOROUGH COUNCIL

have a vacancy for an ASSISTANT SOLICITOR who would be paid on a scale rising from £1,355 to £1,525. The post offers wide experience in conveyancing and advocacy. It opens the way to advancement in local government to higher paid posts. High standard of work and initiative required, but previous experience in local government immaterial. Applications marked "Confidential" to the Town Clerk, (S.J.) Town Hall, Hampstead, N.W.3, by 10th April, 1961.

### BOROUGH OF ENFIELD

APPOINTMENT OF ASSISTANT SOLICITOR

There is a vacancy for an Assistant Solicitor in the establishment of the Legal Section of my Department (which includes a Senior Assistant Solicitor and two Assistant Solicitors).

The successful applicant will be placed within the A.P.T. Division Grade V including London Weighting (£1,355–£1,525), according to experience. March finalists will be considered.

Applications, stating age, particulars of experience and specifying names of two referees must reach the undersigned not later than Friday, 7th April, 1961.

CYRIL E. C. R. PLATTEN,
Town Clerk.

Public Offices,
Gentleman's Row,
Enfield,
Middlesex.
March, 1961.

### THE UNIVERSITY OF MANCHESTER

Applications are invited for the full-time post of LECTURER or ASSISTANT LECTURER in the Faculty of Law. Candidates should have special interests and qualifications in International Law, and a first-class honours degree. Salary scales per annum: Lecturer, £1,050 to £1,850, initial salary according to qualifications and experience (including experience as a practising barrister or solicitor); Assistant Lecturer, £800 to £950. Duties to commence as soon as possible. Membership of F.S.S.U. and Children's Allowance Scheme. Applications should be sent not later than 14th April, 1961, to the Registrar, the University, Manchester, 13, from whom further particulars and forms of application may be obtained.

*continued on p. xxv*

# CORRESPONDENCE

*[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]*

### Streamlining Conveyancing

Sir,—It is often suggested that vendors' solicitors should send, with the draft contract, a completed form of replies to preliminary enquiries. They seldom do this in practice.

I suggest, to the publishers of The Law Society's Conditions of Sale and of the National Conditions of Sale, that Pts. I, II and IV of these enquiries should be incorporated in the form of contract. This would bring these important matters on to the contract, increase their significance considerably and lay them before the parties when they sign.

The form would require some modification to provide statements of fact rather than questions and answers.

R. H. P. YOUNG.

Chelmsford.

Sir,—I think few of us would disagree with your correspondent, Mr. Breakell, who in his letter in your issue of 17th March (p. 261), states that it is technically sufficient for the probate alone to be mentioned in the abstract, or recited in the conveyance.

That distinguished conveyancer, the late Mr. J. M. Lightwood, did, however, suggest a good many years ago, that it was "something of a shock to have the probate thrown at you before you have been told that there has been a death. In that respect, the Epitomes of Abstracts of Title in the Law of Property Act, 1925, are inelegant, though perhaps, technically sufficient."

Since we have had to get used to suffering many worse shocks during the last twenty-odd years, and this is hardly an Age of Elegance, perhaps it is time that all we conveyancers lost our inhibitions and did as Mr. Breakell suggests.

Northallerton, Yorkshire.

BARRY H. TIFFIN.

## "THE SOLICITORS' JOURNAL," 23rd MARCH, 1861

ON 23rd March, 1861, THE SOLICITORS' JOURNAL reported a complaint by Vice-Chancellor Stuart of the bad accommodation provided for the Chancery judges in Lincoln's Inn: "The Vice-Chancellor, in the course of the hearing of a cause, holding up as 'an exhibit' a volume, the binding of which was so much destroyed that the back of it was off, and addressing Mr. Malins, 'as a legislator,' said that the room at his chambers in which his books were kept and in which he sat was so low and damp that his library was being destroyed. As a consolation he had been told that he could purchase the whole of Vesey jun.'s reports for 27s., which . . . was not a bad test of the low estimation in which that valuable repertory of law was held by the present generation of lawyers. His Honour added that he constantly received written complaints from solicitors of the bad accommodation which was provided for them in his chambers. Mr. Malins said that he would take an early opportunity of bringing the attention of that branch of the Legislature to which he belonged to the subject of his Honour's complaint. If the Society of Lincoln's Inn had been allowed to take the course which it proposed in this matter, good accommodation would by this time have been provided in Lincoln's Inn for the Equity Courts and Vice-Chancellor's chambers. It had been said that the accommodation required would be in existence in another year by the completion of the scheme for the centralisation of the law and equity courts at the back of Carey Street. He, however, thought that scheme would not be completed for at least seven years. The Vice-Chancellor: More likely twenty-seven years." [In fact the new Law Courts were opened in twenty-two years.]

# NOTES AND NEWS

### Honours and Appointments

Mr. HERBERT BEWICK has been appointed Recorder of the Borough of Pontefract.

Mr. ARTHUR BRIAN BOYLE, C.B.E., Q.C., has been appointed Recorder of the City of Newcastle upon Tyne. He has relinquished his Recordership of Sunderland.

Mr. JOHN FRANCIS SCOTT COBB has been appointed Recorder of the Borough of Doncaster.

Mr. HOWARD WILLIAM MAITLAND COLEY has been appointed Stipendiary Magistrate for South Staffordshire.

Mr. ARTHUR GOLDBERG, president of the Plymouth Incorporated Law Society, has been elected Lord Mayor of Plymouth for 1961–62.

Mr. DAVID EVAN ALUN JONES, senior solicitor with Surrey County Council, has been appointed deputy clerk of Denbighshire County Council to succeed Mr. William John Rowlands, who is retiring at the end of March.

Mr. P. R. MORRIS has been appointed deputy town clerk of Chichester.

Mr. CHARLES WILLIAM STANLEY REES, T.D., Q.C., has been appointed Recorder of the Borough of Croydon.

Mr. HENRY GAUNT SUDDARDS has been appointed Chairman of the Agricultural Land Tribunal for the Northern Area, in succession to His Honour Judge Goss on his appointment to the County Court Bench.

Mr. J. L. VINCENT has been appointed clerk to Tarvin (Cheshire) Rural Council.

The following appointments are announced by the Colonial Office: Mr. D. R. BARWICK, Assistant Attorney-General, B.S.I.P., to be Judicial Commissioner in the Western Pacific and Legal Adviser to the Resident Commissioner, Gilbert and Ellice Islands; Mr. D. D. CHARTERS, Crown Counsel, Kenya, to be Assistant Registrar-General, Kenya; Mr. M. W. DENNISON, Solicitor-General, Federation of Rhodesia and Nyasaland, to be Puisne Judge, Northern Rhodesia; Mr. C. H. NJONJO, Assistant Registrar-General, Kenya, to be Crown Counsel, Kenya; Mr. A. R. N. OSMAN, Puisne Judge, Mauritius, to be Senior Puisne Judge, Mauritius; Mr. A. G. SHEARS, Resident Magistrate, Nyasaland, to be Crown Counsel, Nyasaland; and Mr. A. M. F. WEBB, Legal Draftsman, Kenya, to be Solicitor-General, Kenya.

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### DRAFTING CONDITIONS OF CONTRACT

"Terms and Conditions of Contract," published by the Purchasing Officers Association, Wardrobe Court, 146A Queen Victoria Street, London, E.C.4, price 5s., is the second edition of a guide to the drafting of conditions of contract prepared by the Economic Survey Committee of the Association. In this revised edition the conditions have been redrafted and are stated to be acceptable to the Contracts Panel of the Federation of British Industries.

# PRACTICE DIRECTIONS

## CHANCERY DIVISION

### Witness List—Fixed Dates

The fixing of dates in the witness list having been made hitherto on the basis of three judges hearing witness actions, it is possible now to thicken up the list.

Causes not yet in the list may appear therein with dates for hearing earlier than those allotted to causes set down before them and already in the list.

Consent applications in any cause already in the list to fix an earlier date than that appearing in the list may be made through Mr. Justice Russell's clerk.

The list referred to is the printed witness list exhibited in Room 136; any dates not in that list are provisional only and must not be relied upon.

This notice does not affect the existing practice whereby a cause will appear in the list twenty-three days after setting down with a date fixed for hearing not earlier than twenty-one days from appearance in the list.

The complete warned list can be inspected in Room 136.

By direction of the judges of the Chancery Division.

J. B. H. Wyman,
*Chief Registrar.*

*9th March*, 1961.

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## RESTRICTIVE PRACTICES COURT

By virtue of the authority conferred upon this court by para. 10 of the Schedule to the Restrictive Practices Act, 1956, I hereby give the following directions:—

Any committal order made in the Restrictive Practices Court may be executed on the authority of a warrant signed by the presiding judge, or one of the judges sitting as a member of the court making the order.

Notices of appeal which by Ord. 58, r. 20 (1), are required to be served on "the proper officer of the court from whose order or decision the appeal is brought" may in the case of appeals from the Restrictive Practices Court in England and Wales be served on the Clerk of the Court and may be effected by leaving a copy of the notice of appeal in Room 100, Bankruptcy Buildings, Carey Street, London, W.C.2.

Kenneth Diplock,
*President of the Restrictive Practices Court.*

*6th March*, 1961.

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*Notice*

## CHANNEL ISLANDS

### Guernsey

1. The Service of Process, etc. (Prohibition) (Repeal) Ordinance, 1955, has been passed in the island, and service of English process is now permissible in Guernsey.

2. They have not introduced, so far, legislation regarding the reciprocal enforcement of judgments.

### Jersey

1. The Service of Process and Taking of Evidence (Jersey) Law, 1960, has been passed in the island, and was ratified by the Privy Council on 7th June, 1960. Service of English process and foreign process is now permissible in Jersey.

2. The Judgments (Reciprocal Enforcement) (Jersey) Law, 1960, has also been passed and was ratified by the Privy Council on 7th June, 1960.

3. Rules for the implementation of these laws are in the process of being made by the Royal Court of Jersey.

C. Grundy,
*Master of the Queen's Bench Division.*

*6th March*, 1961.

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## LOCUS STANDI REPORTS

A volume containing reports of the proceedings of the Court of Referees in Parliament during the sessions 1936–37 to 1959–60 is to be published by Butterworth & Co. (Publishers), Ltd., price £2 2s. net. The volume is a continuation of the series begun in 1867, the last volume of which appeared in 1937 under the title of Bidder's Locus Standi Reports.

## HIGH COURT OF JUSTICE

### Easter Vacation, 1961

*Notice*

There will be no sitting in court during the Easter Vacation.

During the Easter Vacation all applications "which may require to be immediately or promptly heard" are to be made to the judge acting as vacation judge.

No application which does not fall strictly within this category will be dealt with.

The Honourable Mr. Justice Buckley will act as vacation judge from Thursday, 30th March, 1961, to Monday, 10th April, 1961, both days inclusive. His lordship will sit as Queen's Bench Judge in Chambers, in Chancery Court I, on Thursday, 6th April, 1961, at half-past ten.

When the judge is not sitting in chambers, application may be made if necessary, but only *in cases of real urgency*, to the judge personally. The address of the judge must first be obtained at Room 136, Royal Courts of Justice, and telephonic communication to the judge is not to be made except after reference to the officer on duty at Room 136.

Application may also be made by prepaid letter, accompanied by the brief of counsel, office copies of affidavits in support of the application and a minute on a separate sheet of paper signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2." The papers sent to the judge will be returned to the registrar.

Chancery Registrars' Chambers,
Royal Courts of Justice,
Room 136.

*March*, 1961.

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## CHANCERY JUDGES' CHAMBERS

### Easter Vacation, 1961

*Rota*

| 1961 | *Master* | *Summons Clerk* |
|---|---|---|
| Thursday, 30th March<br>Wednesday, 5th April<br>Thursday, 6th April | Master Neave<br>(Room 176) | Mr. James<br>(Room 174) |
| Friday, 7th April ..<br>Monday, 10th April.. | Master Heward<br>(Room 163) | Mr. Loveday<br>(Room 165) |

# BOOKS RECEIVED

**The Council of Europe:** Its Structure, Functions and Achievements. Second Edition. By A. H. Robertson, B.C.L., S.J.D., with a foreword by Guy Mollet. Published under the auspices of the London Institute of World Affairs. pp. xv and (with Index) 288. 1961. London: Stevens & Sons, Ltd. £2 5s. net.

**Companies: Law and Practice.** Supplement to Third Edition. By S. W. Magnus, B.A., of Gray's Inn, Barrister-at-Law, and Maurice Estrin. pp. ix and 84. 1961. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

**Prison Service Journal.** Volume I, No. 2. Edited by M. Winston. pp. 76. January, 1961. Wakefield: H.M. Prison Commissioners. 6d. net.

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"THE SOLICITORS' JOURNAL"

*Editorial, Publishing and Advertising Offices:* Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

*Annual Subscription:* Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

*Classified Advertisements* must be received by first post Wednesday.

*Contributions* are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

# Classified Advertisements

*continued from p. xxiv*

## PUBLIC NOTICES—*continued*

### ROYAL COUNTY OF BERKSHIRE

Applications are invited for the post of JUNIOR ASSISTANT SOLICITOR. Salary within A.P.T. III/IV (£960–£1,310). Previous local government experience desirable but not essential.

Further particulars and application form from the Clerk of the Council, Shire Hall, Reading. Closing date 8th April, 1961.

## APPOINTMENTS VACANT

DERBY.—Very old-established firm requires unadmitted managing clerk for probate. Some knowledge of conveyancing and income tax an advantage. £1,000 per annum or more according to experience. Good prospects. Pension scheme. House could be provided. Holiday arrangements honoured.—Box 7533, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BANBURY.—Unadmitted Conveyancing Clerk required, preferably under 40; pleasant Office, with alternate Saturdays off: commencing salary £1,000, or more, according to experience.—Box 7535, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

£1,000 minimum salary to recently qualified Solicitor for post of assistant in busy old-established County Practice in Essex market town. Conveyancing and general. There are good partnership prospects for a go-ahead man in this pleasant country area, 75 minutes London and 30 minutes coast.—Box 7489, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Manager (around £1,500 p.a.) required by medium-size West End firm to take charge of department. Permanent and congenial position, varied work. Suit youngish man desiring better himself.—Box 7483, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

AYLESBURY, BUCKS.—Vacancy in busy office for unadmitted clerk with experience in particular of conveyancing and probate.—Write stating experience and age to Box 7548, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS, W.1, require unadmitted Conveyancing Managing Clerk, able to handle a volume of work without supervision. Good salary commensurate with ability.—Write in confidence giving details of previous experience, salary required and age.—Box 7542, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BERKSHIRE.—Newly qualified solicitor required as assistant in small general practice in busy market town.—Box 7348, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required by Mid-Sussex Solicitors for conveyancing and general country practice. Some experience preferred but newly admitted man favourably considered. Good salary, progressive position and excellent future prospects.—Write full details Box 7543, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST SUSSEX.—Solicitor to take charge of litigation, all branches including advocacy; full partnership offered right man on one-third basis; capital required; alternatively salaried partnership; trial period; salary by arrangement.—Box 7545, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING and Probate Assistant (admitted or unadmitted) required for busy practice in South East London. Salary by arrangement according to qualifications and experience.—Box 7541, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST SUSSEX.—Litigation and general clerk; please state experience and age; salary by arrangement.—Box 7546, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST SUSSEX.—Conveyancing clerk; please state experience and age; salary by arrangement.—Box 7547, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

### Solicitor

A young Solicitor is required to work in the Legal Department at the London office of a large undertaking. The work is varied and interesting, and men of more than average ability are required.

Preferably applicants should not be more, or much more, than 30 years of age, and a March Finalist would be suitable. The starting salary will be between £1,000 and £1,500 a year, depending on ability and experience; there is a superannuation scheme.

An applicant who wants to make a career in the undertaking will have excellent opportunities to accept responsibility and to gain promotion, including, in due course, appointment to one of the senior posts, some of which are in London, and some outside, and in which salaries are paid substantially in excess of the figures quoted above.

Write giving particulars of age, education, qualifications and experience to Box No. 7563, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4. Closing date 10th April, 1961.

CONVEYANCING and Probate Assistant (admitted or unadmitted) required. Please state experience. Salary up to £1,200 per annum for the right person.—Charles & Co., 54A Woodgrange Road, Forest Gate, London, E.7. MARyland 6167.

BUCKINGHAMSHIRE.—Young admitted solicitor required in busy office in the developing county town of Aylesbury; there are good prospects for a suitable man.—Write stating age and experience to Box 7549, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WATFORD.—Old-established firm require admitted or unadmitted assistant mainly conveyancing and/or probate; own secretary, dictating machine and office; salary according to age and experience.—Box 7550, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTHEND-ON-SEA.—Assistant Solicitor required for expanding practice mainly conveyancing and probate. Opportunity for energetic young man. Prospects of partnership, salary by arrangement.—Write stating age and experience to Box 7116, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

HANTS/SURREY border.—Keen and ambitious solicitor required to take charge of expanding general practice; mainly conveyancing at present; initial salary £1,400–£1,600, according to ability and experience; partnership for capable man after short trial period with possible succession later if desired.—Box 7551, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ADMITTED or Unadmitted Conveyancing Assistant required by Solicitors close to Ilford, Essex. Good salary for suitable applicant.—Box 7508, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EAST Midland County Town.—Managing Clerk for litigation department required. £900—£1,000 p.a. Pension Scheme. Car expenses. Congenial working conditions.—Box 7526, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTHEND-ON-SEA.—Solicitors require Managing Clerk. Chiefly Conveyancing. Salary by arrangement.—Box 7498, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WILLESDEN.—Urgently require young conveyancing clerk or newly qualified solicitor to assist in expanding practice. Good prospects and salary.—Box 7560, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORTH EAST LONDON.—Assistant Solicitor or Managing Clerk required by leading firm of Solicitors at Walthamstow. Must have good knowledge of Conveyancing and Probate and be able to work with only slight supervision. Good progressive salary and bonus according to qualifications, ability and industry. Pleasant working conditions. Own room. Recently admitted man considered.—Box 7561, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required as Assistant in Legal Dept. of Property Company (London Office); mainly conveyancing; recently admitted man or experienced unadmitted managing clerk considered; Staff Pension Scheme and other emoluments; house or flat available at moderate rent after probationary period.—Write stating age, qualifications, experience and salary required, marked "Personal" to Solicitor, THE BRADFORD PROPERTY TRUST LTD., 47 Leigham Court Road, S.W.16.

CASHIER required by West End Solicitors. Must be capable of taking complete charge. 5-day week. Write with details of experience and salary required.—Box 7562, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED Bookkeeper/Cashier able to take complete charge of Solicitors' Books. Good salary and Luncheon Vouchers.—Phone CHA 5351 or write Parlett, Kent & Co., 27 Old Gloucester Street, London, W.C.1.

PROBATE managing clerk required (male or female) by South London Solicitors; own office; minimum supervision or as required; Stenorette system; 3 weeks' vacation; salary according to experience.—Box 7320, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BLACKPOOL Solicitors require conveyancing clerk. State age, experience and salary required.—Box 7564, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

*continued on p. xxvi*

# Classified Advertisements

*continued from p. xxv*

## APPOINTMENTS VACANT—*continued*

LEICESTER.—Assistant Solicitor required for old-established general practice; must be willing to undertake some advocacy; good salary and partnership prospects.—Write Box 189, Reynells, 44 Chancery Lane, W.C.2.

T. V. EDWARDS & COMPANY, Dorland House, 18/20 Regent Street, S.W.1, Tel. WHI 8850, require Assistant Solicitor for general practice.

LEAMINGTON SPA.—Our small but prosperous old-established firm needs an Assistant after Easter. — Please mark "confidential" any application to LARGE & MAJOR, 1 Clarence Terrace, Leamington Spa.

CITY SOLICITORS require assistant solicitor to deal with conveyancing matters with minimum of supervision; some experience of commercial law desirable but not essential. Salary £1,000 to £1,500 p.a. according to experience.—Write Box 7566, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NEWCASTLE Insurance Company has opening suitable for Common Law Clerk in connection with the investigation of Employers' Liability and Public Liability claims. Excellent prospects for young man aged 25/30. An interesting and progressive post with good salary and non-contributory pension scheme.—Write giving full details to Box 7567, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROGRESSIVE Plymouth Solicitors require an Assistant Solicitor, under 35, with knowledge of High Court Litigation. Partnership prospects later. Applicant must be enthusiastic.—Apply Box 7568, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NEWCASTLE UPON TYNE Solicitors with extensive general and commercial practice require Assistant Solicitor with practical common sense and imagination who takes a lively interest in all types of work. Excellent prospects in an expanding firm. A top rate salary will be paid according to experience.—Write Box 7569, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BEDFORDSHIRE.—Assistant Solicitor required by busy general practice; mainly Conveyancing and Probate but willing to undertake some Advocacy; newly admitted man considered; state age, experience and salary required.—Box 7583, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

### SERCK LIMITED

ASSISTANT SECRETARY

Applications are invited from Solicitors and Barristers between the ages of 30 and 35 with experience of secretarial work including commercial law.

The post, which is in Birmingham, carries interesting remuneration.

Please apply in writing to the Secretary, Warwick Road, Greet, Birmingham, 11.

ASSISTANT Solicitor (either sex) required by busy London firm, conveyancing or litigation. Write stating experience and salary required.—Box 7565, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEEDS Solicitors require an Assistant Solicitor with some advocacy experience for busy litigation department. Write stating age and salary.—Box 7572, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEEDS Solicitors require unadmitted litigation clerk including divorce work. Excellent prospects. Write with age and experience.—Box 7573, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

GLOUCESTER.—Assistant Solicitor required. Newly admitted man considered. This is a chance to "get in on the ground floor" in a newly established firm in a pleasant part of England. Prospects will depend on hard work and contribution to progress.—Box 7574, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SURREY (near Kingston).—Admitted Solicitor with at least five years' experience required for mainly conveyancing practice, some litigation; suitable applicant would be considered for ultimate partnership; small office, pleasant surroundings.—Box 7575, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LONDON.—An assistant solicitor, age under 35, required in the legal department of a progressive life office to deal mainly with conveyancing and company matters; commencing salary up to £1,500 dependent on age and experience; widow's pension and non-contributory retirement pension schemes in operation; excellent early prospects for the right applicant.—Box 7576, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BASINGSTOKE, Hants. — Common Law Clerk required by busy general practice.—Write with age, experience and salary required. Pension Scheme.—Box 7577, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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*continued on p. xxvii*

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# ★ Classified Advertisements ★

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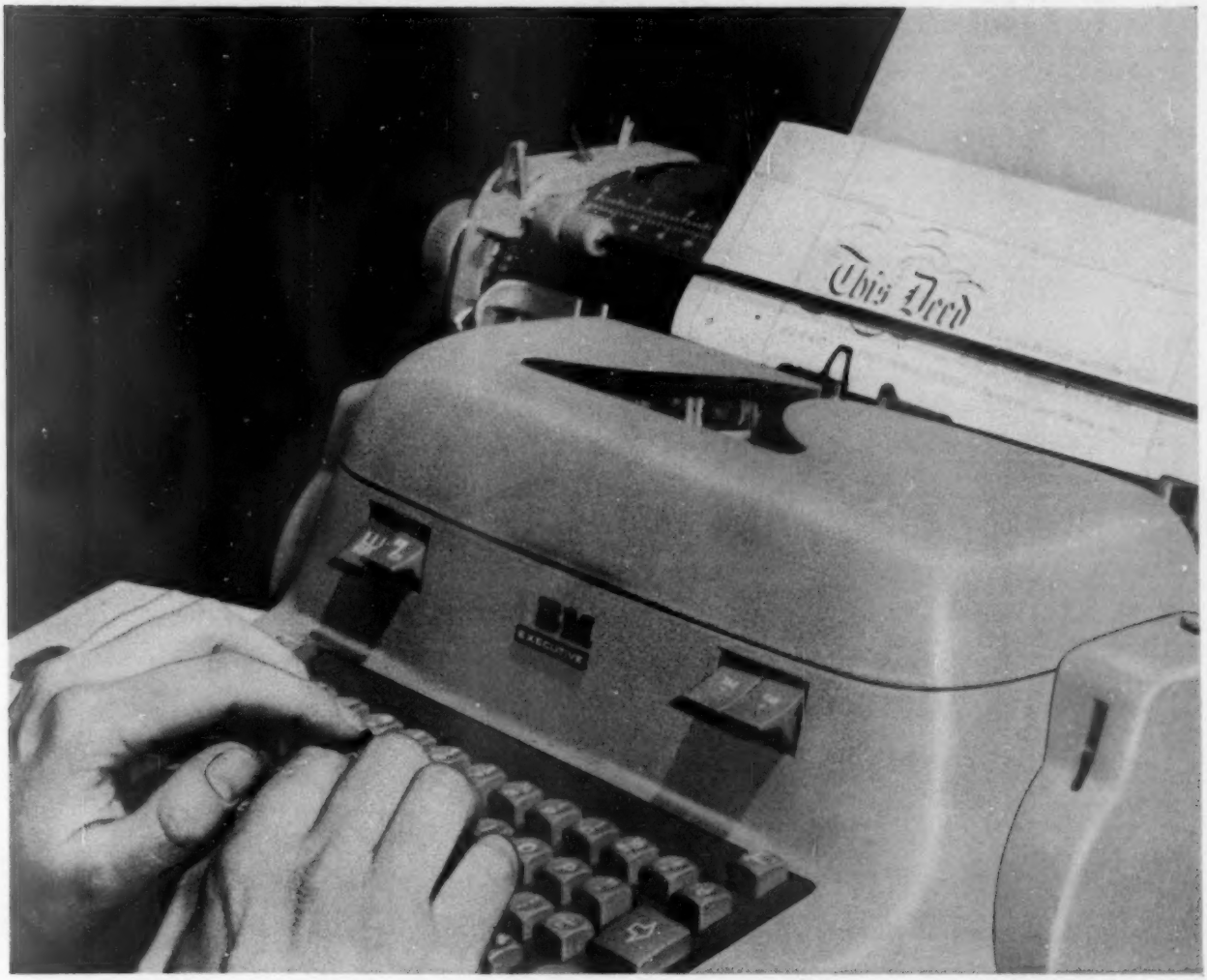


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